

VOLUME NO. 35**Opinion No. 77**

TAXATION — Exemption from, non-profit organization's property, veterans' clubhouses and property; TAXATION — Nonprofit n's property, veterans' clubhouse and property, rental of, loss of exemption; TAXATION — Special improvement districts, non-profit organization's property, veterans' clubhouses and property, assessment of, obligation to pay. Article XII, section 2, Constitution of Montana, 1889; Article VIII, section 5, Constitution of Montana, 1972; sections 11-2222 and 84-202, R.C.M. 1947.

- HELD:**
- 1. A nonprofit organization's building which is rented out for gain or profit is not exempt from property taxes pursuant to section 84-202, R.C.M. 1947.**
 - 2. A nonprofit organization which owns real property within a special improvement district is obligated to pay special improvement assessments.**

April 3, 1974

Mr. Douglas B. Kelley
Garfield County Attorney
County Courthouse
Jordan, Montana 59337

Dear Mr. Kelley:

Your request of my opinion may be phrased as follows:

1. Does a nonprofit organization's renting-out of its real property remove that property from tax-exempt status?
2. Is a nonprofit organization which owns real property within a special improvement district obligated to pay special improvement assessments?

The Constitution of Montana, 1889, Article XII, section 2, explicitly provided that certain property was exempt from taxation. It stated:

The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity and evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, may be exempt from taxation.

Montana's new constitution leaves all exemptions to the discretion of the legislature. The Constitution of Montana, 1972, Article VIII, section 5, provides in pertinent part:

- (1) The legislature may exempt from taxation:
 - (a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.
 - (b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.
 - (c) Any other classes of property.

The permission granted to the legislature to exempt property, embraced in the Constitution of Montana, 1889, Article XII, section 2, and the Constitution of Montana, 1972, Article VIII, section 5, has been exercised by what is now section 84-202, Revised Codes of Montana, 1947. See: **Cruse v. Fischl**, 55 Mont. 258, 175 P. 878 (1918); **Montana Catholic Missions v. County of Lewis and Clark**, 13 Mont. 559, 35 P. 2 (1893). According to Article XII, section 2, *supra*, ownership of the property is of no importance. Such property is exempt from taxation if it is **used** exclusively for educational purposes.

Section 84-202, R.C.M. 1947, states in pertinent part:

. . . **such other property as is used exclusively** ... for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity . . . and public art galleries and public observatories not used or held for private or corporate profit, **are exempt from taxation**, but no more land than is necessary for such

purpose is exempt; . . . and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, **is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit**, together with the library and furniture necessarily used in any such building . . . (Emphasis supplied)

In ruling upon an issue similar to your first question and holding that only such property belonging to a society or organization of honorably discharged United States soldiers, sailors or marines, as is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, is exempt from taxation under the provisions of section 1998, R.C.M. 1935 (now section 84-202, R.C.M. 1947), then-attorney general Bottomly in 21 **Opinions of the Attorney General**, no. 62, at page 86, stated:

Our Supreme Court has repeatedly held that exemption is the exception, and one claiming his property is exempt from taxation has the burden of showing that his property belongs to a class which is specifically exempt. [Citations]

It may be noted that in exempting a clubhouse or building belonging to any society or organization of honorably discharged United States soldiers, etc., Section 1998, Revised Codes of Montana, 1935 [now section 84-202, R.C.M. 1947], exempts such building **only if it is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit ...**

It is not the society or organization mentioned in the statute that is exempt, but the property owned by such organization or society. Such property is only exempt when it is used exclusively for the purposes mentioned in the statute. (Emphasis supplied)

The facts set forth in your letter indicate that the nonprofit organization in question has rented its building out "to various groups over the years". Whether or not this particular nonprofit organization's building has been used for "gain or profit" and thereby loses its property tax-exempt status is an administrative or judicial decision which this office is not authorized to make. Such a question should probably be addressed to the state department of revenue and the courts for a ruling based upon all the pertinent facts.

The law, on the other hand, concerning a nonprofit organization's exemption from real property taxation, as set forth above, requires that the exemption be strictly construed. **Cruse v. Fischl**, supra, at page 265; **Town of Cascade v. County of Cascade**, 75 Mont. 304, 308, 243 P. 806 (1926). The exemption applies, according to section 84-202, supra, only if the

. . . clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in (the) army or navy of (the) United States, is used **exclusively** for educational, fraternal, benevolent or purely

public charitable purposes, rather than for gain or profit . . .
(Emphasis and bracketed material supplied)

If the nonprofit organization's building in question was, in fact, used for gain or profit, that building would lose its property tax-exempt status pursuant to section 84-202, R.C.M. 1947.

Your second question is whether a nonprofit organization which owns real property within a special improvement district is obligated to pay special improvement assessments.

The Constitution of Montana, 1972, Article VIII, section 5, *supra*, provides in pertinent part:

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. **It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.** (Emphasis supplied)

The new Montana constitution, which became effective July 1, 1973, clearly provides that the legislature may authorize the assessment of charges for special improvements and maintenance on tax-exempt property within a special improvement district.

Through the provisions of Title 11, chapter 22, R.C.M. 1947 (first enacted in chapter 89, Session Laws of 1913), relating to special improvement districts, especially section 11-2222, the legislature has, in fact, for a long time provided that a city council shall "defray the cost of making improvements in any special improvement district" by assessing those costs "upon **all** property in any district created for such purpose".

Even though there was no specific constitutional provision allowing the legislature to authorize the assessment of charges for special improvements and maintenance on tax-exempt property within a special improvement district prior to the new Montana constitution, Montana's case law has long held as a general rule that a constitutional or statutory exemption from taxation, e.g., section 84-202, R.C.M. 1947, or former Constitution of Montana, 1889, Article XII, section 2, is to be taken as an exemption from ordinary taxes only, and does not include an exemption from special assessment for local improvements. **City of Kalispell v. School District No. 5**, 45 Mont. 221, 122 P. 742 (1912); **Ford v. Great Falls**, 46 Mont. 292, 127 P. 1004 (1912); **State ex rel. Great Falls v. Jeffries**, 83 Mont. 111, 270 P. 638 (1928).

As the Montana Supreme Court stated in the **City of Kalispell** case, *supra*, at page 226:

. . . special assessments, though a species of taxation are not taxes; and it is held uniformly that constitutional and statutory provisions exempting property from taxation have no application to special assessments for improvements which, presumptively, add to the value of the property involved in an amount equal to the assessment levied.

Taxes are public burdens imposed on the inhabitants of the whole state, or some portion thereof, for a public purpose. Constitution of Montana, 1972, Article VIII, section 1. Taxes are imposed on a particular area or group without reference to peculiar benefits to particular property or individuals.

Assessments, on the other hand, have reference to impositions for improvements which are specially beneficial to particular property or individuals, and which are proposed in proportion to the particular benefits to be conferred. Assessments for special improvement districts are usually justified because the improvements confer special benefits to the properties within the district and because the assessments are divided in proportion to the benefits received by each piece of property.

In the case of **State v. Jeffries**, *supra*, at pages 115 and 116, the Montana Supreme Court stated:

The theory upon which a municipality may levy assessments for special improvements is that the property charged receives a corresponding physical, material and substantial benefit from the improvement (*Power v. City of Helena*, 43 Mont. 336, 36 L.R.A. (n.s.) 39, 116 Pac. 415); that the property assessed will be enhanced in value to the extent of the burden imposed (*Butte v. School District*, 29 Mont. 336, 74 Pac. 869) . . .

Also, at page 118, the court stated:

Counsel for the city urge . . . that . . . special assessments should be treated as taxes, as the term is ordinarily used. Cases are cited from certain states supporting the argument, but we cannot adopt this reasoning. We have already shown that the **constitutional and statutory provisions exempting certain property from taxation do not constitute an exemption of that property from assessments for special improvements constituting a benefit to or betterment of the property assessed** . . . (Emphasis supplied)

It is clear from the discussion above that the nonprofit organization's real property, which you described as being within a special improvement district, benefits from that district. Its owner, then, is legally obligated to share in the cost of the improvements or maintenance by payment of a special assessment.

THEREFORE, IT IS MY OPINION:

1. A nonprofit organization's building which is rented out for gain or profit is not exempt from property taxes pursuant to section 84-202, R.C.M. 1947.
2. A nonprofit organization which owns real property within a special improvement district is obligated to pay special improvement assessments.

Very truly yours,
 ROBERT L. WOODAHL
 Attorney General