Tax Exception of Property Used for Educational, Religious and Charitable Purposes

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automobile may be, not an unwise expansion or mistreatment of agency, but a new liability in tort which will become accepted by degrees. In spite of the persistency of the courts in calling this thing agency it is true even today that it resembles an independent tort liability—it need only be extended over the remainder of the situations where the owner places a car in the hands of another for operation. As to the wisdom, or necessity, of so extending it the courts or the legislature must decide, preferably the legislature.

—R. P. HOLLAND.

TAX EXEMPTION OF PROPERTY USED FOR EDUCATIONAL, RELIGIOUS AND CHARITABLE PURPOSES.—The Constitution of West Virginia provides that "all property, both real and personal, shall be taxed in proportion to its value * * * but property used for educational, literary, scientific, religious or charitable purposes; all cemeteries and public property may, by law, be exempted from taxation."* Pursuant to the authority vested in it by this provision of the Constitution the legislature has by statute exempted certain property, among which is the following: "* * * property used exclusively for divine worship; parsonages, * * * property belonging to colleges, seminaries, academies, and free schools, if used for educational, literary or scientific purposes * * * property used for charitable purposes, and not held or leased out for profit, * * * all property belonging to benevolent associations, not conducted for private profit, and used exclusively for the purposes of moral and physical education, * * * any hospital not held or leased out for profit; * * * and, provided further, that such exemption from taxation shall apply to all property, including the principal thereof, and the income therefrom, held for a term of years or otherwise under a bona fide deed of trust * * * by a trustee, * * * required by the terms of such trust to apply, annually, the income derived from such property to education, religion, charity and cemeteries, when not used for private purposes or profit.

Several interesting questions have arisen, and may arise, under these provisions of our Constitution and statute. Our first inquiry is, may the legislature exempt any property from taxation that it chooses, or is it limited in that it can only exempt "property used for educational, literary, scientific, religious or charitable

1 CONST. art. 10, §1.
purposes; all cemeteries and public property. Our court has decided that under the Constitution all property is subject to taxation, except such property as the legislature may exempt, under the prescribed exceptions, and that any legislative exemption of property not used for the enumerated purposes, is unconstitutional and void. It will be noted that the Constitution provides for exempting property used for the purposes named. Therefore exemption depends upon use, not ownership.

Quaere, what will constitute a sufficient use of property for educational, religious, and charitable purposes to entitle it to tax exemption? It is a general principle, which our court has followed, that exemption laws are to be construed strictly as against those claiming exemption. The theory of this rule of strict construction seems to be that all property should equally bear the burden of taxation, for the corresponding benefits conferred by the state, and thus only such property as clearly performs certain obligations of the state, should be relieved of the burden of taxation. Our court has held that a Masonic lodge is a charitable and benevolent organization, and where the property of the lodge is devoted exclusively to the purposes of its busienss, it is property used for charitable purposes and exempt from taxation. The court pointed out the fact that the Constitution did not require the use to be exclusively for the enumerated purposes. The weight of authority is to the effect that Masonic lodges are charitable and benevolent societies, but the Supreme Court of Maine, in considering their exemption law which corresponds to ours, reached a different result. But when a portion of the lodge building is rented to third persons, even where the income was used for charitable purposes, and upkeep of the building, the property is not exempt, as it is "leased for profit" within the terms of our statute. The court did not consider the question of apportionment, i.e. taxing that portion of the building rented, according to the value of the part in relation to the value of the whole building, and exempting that part used for lodge purposes. While in some cases there might be a practical difficulty involved, it seems

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4 Ibid.
5 COOLEY TAXATION (4th ed.) 672; State ex rel v. Martin, 143 S. E. 340 (W. Va. 1928).
6 COOLEY, supra.
7 In re Masonic Temple Society, 90 W. Va. 441, 111 S. E. 637. (1922).
8 Ibid, cases cited.
9 Bangor v. Masonic Lodge, 73 Me. 429 (1882).
A fairer result would be reached by apportionment, and in some jurisdictions this has been done.\(^\text{11}\) It has been held that mere occasional or temporary use of the property, such as renting dining rooms in the lodge building for banquets, or ballrooms for dances, will not constitute a sufficient "use for private profit" to subject the property to taxation.\(^\text{12}\) Where property "actually used for charitable purposes" is exempt, and the building is destroyed by fire, the vacant land may be taxed.\(^\text{13}\) However, where the building is in the course of construction, even where exemption is based on use, the property is not subject to taxation.\(^\text{14}\) The Colorado law provides that lots with buildings thereon, if the buildings were used for strictly charitable purposes, should be exempt from taxation.\(^\text{15}\) In a recent case in that state a Masonic association owned a park, which it divided up into lots and leased to individual members, who erected summer cottages, the grounds being used by Masons and their families as pleasure and recreational grounds, and as a health resort. The association used the proceeds for charitable purposes, and the Colorado court held this property exempt.\(^\text{16}\) It has been said that "exemption from taxation of charitable institutions is based on benefits conferred on the public and consequent relief of burden on the state to advance the interests of its citizens."\(^\text{17}\) The Colorado court seems extremely liberal in its holding, and not to have followed the strict rule of construction. The quid pro quo furnished for the exemption seems meager, to say the least, for it appears the use of the property was to "make life more pleasant for the members of the association rather than to dedicate its property to charity."\(^\text{18}\) The Illinois court on the other hand follows the rule of strict construction, to a rather extreme degree, it is submitted. The Illinois law,\(^\text{19}\) like the West Virginia, exempts property used for charitable purposes, and not leased for profit. An old ladies' home rented land for farming purposes, using the income exclusively for their support. Even though the income from the land


\(^{12}\) Hardin v. Lodge, 23 Wyo. 522, 154 Pac. 323 (1916).

\(^{13}\) Y. M. C. A. Ass'n. v. Monmouth County, 92 N. J. L. 330, 105 Atl. 726 (1919).


\(^{15}\) Const. art. 10, §5, c. 1. 1921, 7198.

\(^{16}\) Board of Commissioners v. Masonic Ass'n., 80 Colo. 183, 250 Pac. 147 (1926).

\(^{17}\) School of Domestic Arts v. Carr, 322 Ill. 562, 153 N. E. 669 (1926).


\(^{19}\) 2 Smith-Hurd Rev. St., 1923, c. 120. Const. 1870, art. 9, §3.
was not sufficient to support the home, and they had to solicit charitable subscriptions, the court held the farm land subject to taxation.\textsuperscript{20} It would seem that in Illinois the only way land could be exempt as being used for charitable purposes would be for the land to be actually occupied by a charitable organization. Quaere, what would be the effect if the old ladies did the farming themselves? It seems at least open to question whether the legislature intended the phrase "leased for profit" to apply to such a case, and it seems further not open to question that this real estate was being used to relieve a burden of the state. Our court has held that a hospital, where no profit was sought by the owners, and all proceeds were devoted to its maintenance and support, is exempt from taxation, even where payment was exacted from patients able to pay.\textsuperscript{21} However, the mere fact a portion of the patients are served free of charge will not exempt the hospital as a "purely public charity."\textsuperscript{22} The object of the owners in founding the hospital seems to be the determining factor. In a recent case real estate was conveyed to trustees, in trust for an educational institution, the income being used to pay off existing liens against the property, none of it being applied to the school. The court held that the real estate was subject to taxation.\textsuperscript{23} The case appears to be sound, for while it might be contended that the income was applied to education in that the liens against the trust property were being discharged, the court in following its rule of strict construction held that the use contemplated by the Constitution was primary and immediate, not secondary and remote. The practical result of holding otherwise would be to allow the donor to pay his debts from the income of tax exempt property, which in effect would come within the terms of the statute as "used for private purposes and profit." The Illinois court in a recent case held that where the income from trust property was loaned to deserving students, the property was not exempt as being used for school purposes.\textsuperscript{24} Another interesting West Virginia case holds that a parsonage is exempt from taxation, where it had been rented to different individuals for a period of fourteen years, the income being used to pay off the church debt, and maintain the

\textsuperscript{20} People \textit{ex rel} Baldwin \textit{v.} Jessamine Withers Home, 312 Ill. 136, 143, N. E. 414 (1924).

\textsuperscript{21} Reynolds Memorial Hospital \textit{v.} County Court, 78 W. Va. 685, 90 S. E. 238 (1916). Acc. Baptist Hospital \textit{v.} Nashville, 3 S. W. (2d) 1059 (Tenn. 1928).

\textsuperscript{22} San Antonio \textit{v.} Santa Rosa Infirmary, 249 S. W. 498 (Tex. Civ. A. 1923).

\textsuperscript{23} State \textit{ex rel} Farr \textit{et al} \textit{v.} Martin, 143 S. E. 356 (W. Va. 1928).

\textsuperscript{24} People \textit{ex rel} Olmstead \textit{v.} Univ. of Ill., 328 Ill. 377, 159 N. E. 811 (1927).
property. The Minnesota court in a recent case held a parsonage was not exempt as "church property" where it had been rented to third persons, and the income applied to religious purposes. In West Virginia the law seems to be that property is exempt where the income is used for education, religion or charity, provided the property is held in trust. Where there is no trust the property is not exempt, even though the income is so used, for in this case it is held or leased for profit, and not "used" for the above named purposes. The apparent exception to this latter rule seems to be in the case of parsonages, but the case might be distinguished on the ground that the phrase "held or leased out for profit" does not follow the word "parsonage" in the statute, which was the determining factor in the decision of State v. McDowell Lodge. However, it does seem the court relaxed somewhat its adopted doctrine of strict construction in State v. Kittle for the word "parsonage" has been defined "a clergyman's residence."

—Kendall H. Keeney.

25 State v. Kittle, 87 W. Va. 528, 105 S. E. 775 (1921).
26 State v. Union Congregational Church, 216 N. W. 326 (Minn. 1927). See also Methodist Church v. San Antonio, 201 S. W. 669 (Tex. Civ. A. 1918).
27 Ibid, n. 10.
28 Ibid.
29 6 Words and Phrases, 5178.