Opinion No. 17-2048

August 23, 1917

BY: HARRY L. PATTON, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Taxation of Masonic Property.

OPINION

I have before me the matter submitted by you with reference to the taxation of property belonging to Montezuma Lodge No. 1, of Santa Fe, said lodge being of the Masonic order.

From statements made by Judge Wright, counsel for the lodge in this matter, I find that this question involves a building on San Francisco Street, fronting on the plaza. The building is occupied on the first floor by two stores, and the front rooms upstairs on the second floor are rented by the United States Land Office Field Service. The Masonic order occupies the remainder of the second story. The record is not clear upon the subject, but I infer that a residence occupied by Mr. Frank N. Thompson is likewise involved.

Such property would be subject to taxation unless exempted by constitutional or statutory provisions. Section 5430, Codification of 1915, contains the following provision:

"The following property shall be exempt from taxation: * * * the grounds, buildings, books, papers, and apparatus of literary, scientific, benevolent, agricultural, and religious institutions and societies, when the property of said institutions and societies shall be devoted exclusively to the appropriate objects of such institutions, and not leased or rented or otherwise used with a view to pecuniary profit."

The weight of authority is to the effect that a fraternity, such as the Masonic order, is properly classified as a benevolent order, and in anticipation of the provisions of the Constitution which I shall hereafter cite, I will say that it has likewise been held to be a charitable order, and that in such connection the words "charitable" and "benevolent" have been held to be synonymous. The section referred to in substance provides that the grounds, buildings, etc., of benevolent institutions and societies shall be exempt from taxation when the property of said institutions and societies shall be devoted exclusively to benevolent objects, and not leased or rented with a view to pecuniary profit. Were this statute our only regulation upon this subject, the question would be easier of solution. I find that the great weight of authority authorizes the taxation of property of such orders when such property is leased or rented for pecuniary profit. I do not think the contention of the attorney for the lodge to the effect that the money derived

from rents was applied toward the charitable purposes, is tenable. The weight of authority seems to be against such doctrine.

The other provision governing such subject is found in Article VIII, Section 3, of the Constitution, and is as follows:

"all property used for educational or charitable purposes * * * shall be exempt from taxation."

It may be noted that this provision of the Constitution does not authorize the legislature to exempt such property from taxation, but the exemption is contained in the Constitution itself, and it might be classed as self-executing. It may be further noticed that there is no restriction to the effect that the property shall be used or devoted exclusively to the objects of the society or institution. In such respect, our Constitution differs from all of the statutes of the other states which I have examined, and practically all of the cases which I have examined construe statutes containing such clause. It may be further noted that the Constitution contains no restriction against leasing or renting property with a view to pecuniary profit. It might be urged that, under our Constitution, it would be sufficient that the property be used for charitable purposes, without the requirement that it be exculsively used for such purpose. Notwithstanding such theory, I do not believe that it was the intention of the framers of the Constitution that property belonging to such orders, leased or rented for pecuniary profit, should be exempt from taxation. It may be seen that such orders might or could own large amounts of property for rental or other purposes disconnected with the objects of the society. The owner of such property would enjoy a decided advantage over the owner of adjacent or competing property which was subject to taxation, and I can conceive of instances in which such course might be abused.

In view of the closeness of the question, I recommend that the part of the property not used exclusively for the purposes of the order be taxed, and by pursuing such course we may be able to have the matter decided in the courts, which would be gratifying to me. The syllabus notes of a host of authorities upon this subject may be found in Decennial Digest "Taxation," Section 241 and subsequent "key number series." Also see notes 7 L. R. A. (N. S.) 380-381; 16 L. R. A. (N. S.) 829; L. R. A. 1915-C, 694.

The other question presented is that of the A. T. and S. F. Hospital located at Clovis in Curry County. From evidence taken before your Board at its last meeting, it is disclosed that this institution is maintained for the purpose of providing medical and surgical treatment and care for the employees of the A. T. and S. F. Railway Company and its allied companies who may be injured or disabled by accident or sickness while in the employ of said companies. The Association has no capital stock and its maintenance is provided for by contributions of the employees of the company by deducting a certain amount from the monthly pay check of each employee, ranging in amount from 25c to $ 1.00, graded according to the amount of the earnings of the employee. It is claimed that this is a strictly charitable or benevolent institution, and authorities are cited by counsel for the Hospital which sustain such view. On the other hand, in the notes above cited

may be found cases which hold that such an association is an association organized for the mutual benefit of its members, and that such institution is in the nature of a benefit insurance society. In Jones' Estate, 2 N. Y. Supp. 671, it was held that an association of bank clerks, extending aid to sick and disabled members, as well as paying certain death benefits, did not fall within the purview of the statute exempting from taxation the property of "charitable institutions," and that such society was nothing more than a benefit insurance society.

In Young Men's Protestant Temperance Benevolent Society v. Fall River, 160 Mass., 409, 36 N. E. 57, it was held that a society organized for mutual relief, assistance, charity, and benevolence, paying certain sick and death benefits, was not a charitable association within the statute exempting the property of benevolent and charitable societies from taxation, but was a mutual relief or insurance association. I find cases which apply this rule to the Masonic Aid Association, the A. O. U. W. lodge, and other kindred orders.

I am frank to state that this case, like the first one discussed, presents a close question, but I recommend that you take such steps with reference to its taxation that we may be able to get a decision from the courts upon this question also.