No. 0

May 28, 1953

To Ernest H. Johnson, State Tax Assessor
Re: Effect of Veterans' Posts letting Premises.

I take the liberty of restating your question as follows: Does a veterans' post lose its property tax exemption when it lets its hall, normally used by the post itself, to

(a) Women's Auxiliary and other bodies affiliated or connected with the post, or community endeavors, support of whose purposes is includable in the broad chartered powers of the post?

(b) Purely private or commercial ventures, such as wedding parties, during period when the premises are not required by the post for its own purposes?

In summary, neither use excludes the building from the tax exemption, as long as the substantial use of the premises is that of the veterans' post.

Exclusive use by outsiders.

Our discussion excludes the situation where a post has extra space in its building and leases the same for the exclusive occupancy of a private tenant. We are discussing only the situation where the premises owned and used by the post are let out to others when not required by the post.

When a post has extra space and leases the same to a tenant, the exemption is lost pro rata. City of Lewiston v. Fair Association, 1941, 138 Me. 39; Foxcroft v. Straw, 86 Me. 76; Foxcroft v. Campmeeting Association, 1893, 86 Me. 78; City of Auburn v. Y.M.C.A., 86 Me. 244. The general principle involved is that property bought as an investment is taxable. This principle is derived from two basic premises: (1) Exemptions are to be construed narrowly. (2) When an exempt institution goes into business, it should do so on a competitive basis; e. g., if a charitable corporation leases office space, the part of the building used for that purpose should be taxed the same as anybody's.

Thus, when our court considered the taxability of a camp meeting site, part of which was a buildinguused for worship, part of the land being used for cottage lots, and part of the premises for the feeding and stabling of the campers' horses, and part for the feeing of the individual campers, it said:

> "If it be a benevolent and charitable institution, the property used for the stablingg of horses for hire, let for victualing purposes and for the use of cottages is clearly not occupied by the association for its own purposes within the meaning of R. S., c. 6, §6, clause II.

> It is property from which revenue is derived - just as much business property as a store or mill would be."
> Foxcroft v. Campmeeting Association, 86 Me. 78, 80.

In Auburn v. Y.M.C.A. Association, 1894, 86 Me. 244, 247, when the court was considering a Y.M.C.A. building, it said:

> "The charter accepted by the defendants authorizes them to take and hold real estate for 'religious, educational and charitable purposes.' The counsel for the plaintiffs contend, that it would be an invidious discrimination to allow them to hold real estate for purposes of rent and revenue in competition with other holders of commercial property without payment of taxes thereon; that such an exemption to them is an exaction on others."

Non-exclusive use by outsiders.

Having thus briefly referred to the situation where part of the premises are let in their entirety, we now come to the non-exclusive use first mentioned in this memorandum.

The controlling statute, subsection III, Section 6, C. 81, has been entirely re-written by the 1953 legislature, but it appears that the answer will be the same under either writing of the law. The law in effect in 1951 respecting the property of veterans' posts exempts

> "the real and personal property owned by posts. . . and occupied or used solely by said posts for their own purposes."

The 1953 law, c. 37, exempts

> "real and personal property owned and occupied or used solely for their own purposes by . . . posts. . ." (Underlining supplied.)

It is elementary that every word of an act must be given meaning, including "solely". Before consulting out-of-state cases, the legislative history has been reviewed in order to see whether our legislature attached any peculiar meaning to its words.

The first appearance of the phrase was in c. 258, P. L. 1919 (Special Session of November 4-8, 1919). That act provided for an exemption of

> "the real and personal property owned by posts of the American Legion in this state and occupied or used solely by said posts for their own purposes."

As is the case now, the quoted language was inserted between semi-colons and it is fairly obvious that there is no other statutory modification of the language. The phraseology proved so popular that it was added in connection with the exemption of chambers of commerce in c. 37, P. L. 1927, with the provision exempting the Red Cross, c. 50, P. L. 1941, and, of course, the exemption of the other veterans' organizations added by c. 218, P. L. 1937. There was no debate on the bill and it may safely be concluded that the Maine legislature did not attach any peculiar meaning to its words.

Among all the Maine cases, while there are a number whose facts include non-exclusive use by the exempted organization, there is no case construing the word "solely" as it appears in connection with the veterans' posts exemption.

The word "solely" is equivalent to "exclusively"; but, obviously, a person may be considered "sole occupant" upon the ground that he occupies the premises in question all the time and to the exclusion of others, or his occupation may be termed "sole" even though it is discontinued from time to time. The phrases "exclusively occupied" and "solely occupied" have appeared in many tax exemption statutes and it is customary to give the words such meaning that an occasional letting of the premises which in no way interferes with the chartered activities of the occupant does not destroy the tax exemption.

A general rule is stated by Cooley on Taxation, 4th Ed., §685:

> "In determining whether property is exempt as 'used exclusively' for certain purposes, it is the primary use to which the property is put and not its secondary use which is to be considered. If the primary use is a use to which the exemption extends, it is immaterial that the secondary or incidental use is for purposes not embraced withih the exemption. This is the general rule. 'Exclusively' used, according to the better considered decisions, means the primary and inherent use and does not preclude such incidental uses as are directly connected with, essential to, and in furtherance of, the primary use. To illustrate: the primary use of a building may be for the purposes of a charitable or religious or educational institution, so that the exemption is not wholly or partly lost because on occasions the building or part of it is used for social purposes or let out to others for entertainments or the like for which an admission fee is charged, where such use is merely incidental to the principal use."

The doctrine of incidental versus dominant use is upheld by Emerson v. Milton Academy, 1904, 185 Mass. 414. Our own court in Curtis v. Odd Fellows, 99 Me. at p. 359, recognized it:

> "There may be cases where the use of the property of such an owner for other purposes is of such a dominant character, and the occupation by the owner for its own purposes is so incidental and trivial, or where where the use of the property by the owner for its own purposes is so plainly an attempt to evade taxation, the substantial use and occupation being for other purposes, that such occupation would not be sufficient to make the property exempt. . ."

Professor Cooley, section 686, op. cit., commenting on the Odd Fellows case, said:

> "There is an exception, however, where the letting or the income is merely incidental to the occupancy by the organization either because only for a very brief time or subordinate to the occupation by the organization. In such a case the exemption is not lost."

In the Odd Fellows case the structure was a single small building, all of it useful and used for lodge purposes. The lodge used all the building itself but let space in the building from time to time to Christian Scientists, the Rebecca Lodge, and others. The court summaried its view as follows:

> "What we decide is simply this, that where a building of such an association is designed for use by it for its own purposes, and a substantial use is made of all the building by the association for its own purposes, in good faith, the property is exempt from taxation under our statutes, notwithstanding such occupation may not be exclusive, and the owner may sometimes allow other associations and individuals to use some portions of the property for a rental, when it can be done without interfering with the use of same by the owner for its own purposes."

See also Webb Academy v. Grand Rapids, 1920, 209 Mich. 523. In that case a school was involved. The question was whether some of the residences of the teachers, owned by the school, were subject to the property tax. The court said:

> "If the exemption is only of property used for school purposes, it will not apply to property held merely for revenue; but school

> property will not lose its exemption by being leased in vacation, neither will church property by a merely incidental use for schools or by occasional letting for entertainments."

It will be seen that the answer to the first division of the question, relating to activities associated with or subordinated to the principal activities of the posts, involves a clearer situation than use for merely private or commercial ventures. As far as the latter are concerned, an extensive letting could more easily be proved the cause of loss of the exemption.

The only judicial decision known to me which casts any doubt upon the above conclusion is Curtis v. Odd Fellows, 1904, 99 Me. 356. In that case a charity was involved and the statute provided that if property were used for a purpose other than that of the charity, such property should be taxed. The court held that the statute attached an exemption where the property was "occupied" by the charity and gave considerable weight to the fact that the legislature did not say "exclusively occupied". Our statute relating to veterans' posts does contain the word "solely" and it would be quibbling with terms to say that this is not equivalent to "exclusively". However, it should be pointed out that every word in a statute must be given meaning and the statute states "occupied or used", so that if the property is either occupied solely or used solely by the veterans' posts, it is to be deemed exempt. Whatever additional meaning is arrived at by adding the second word, a broader meaning results than the phrase "exclusively occupied", which was all the court considered. I do not think that too much weight can be given to this argument, for the reason that the question in issue was really not before the court. Further, there is a heavy weight of authority in favor of the conclusion above stated.

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