

**TAXATION—Exemption of Charitable, Religious and Educational Institutions from Property Taxes**

Real property taxes were assessed on lake front property owned by a charitable hospital and used for rest, recreation and relaxation of students in the hospital's school of nursing. The lake property was twenty-two miles from the hospital. The district court upheld the assessor and the hospital appealed. Held, reversed. The Supreme Court found, as the hospital claimed, that a charitable hospital's property is exempt from taxation if the use to which it is put is reasonably necessary for accomplishment of the principal purposes of the hospital. The property need not be indispensable to such purposes, nor in close proximity to central structures of the hospital. *State of Minnesota v. Fairview Hospital Association*, 114 N.W.2d 568 (Minn. 1962).<sup>1</sup>

This is one example of tax exemption in a neighboring jurisdiction. As real property taxes come in for intensified study in Iowa, the area of tax exemption of properties in specified circumstances becomes of considerable interest. The area of exemption from taxes for religious, charitable and educational institutions will be studied here.

Mention will be made, however, of certain propositions which are basic to any tax exemption. All tax exemptions are based on statutory law. Iowa and other jurisdictions have special statutes which delineate in great particularity the conditions under which specific property will be tax exempt.<sup>2</sup> Terms of taxation statutes are to be strictly construed. Any doubt must be resolved in favor of taxation and against exemption. Property, to be exempt, must clearly fulfill all requirements of the exempting statutes, with each case being considered on its facts.<sup>3</sup> The exemption is not to be made by judicial construction, but anyone claiming exemption from taxation must clearly show that the property is exempt within the terms of the constitution and the statute.<sup>4</sup>

Iowa Code Section 427.1 provides: "The following classes of property shall not be taxed: (9) All grounds and buildings used by literary, scientific,

<sup>1</sup> Applicable constitutional and statutory provisions were: MINN. STAT. ANN. Const. Art. 9 § 1 (Supp. 1961): . . . taxes shall be . . . collected for public purposes, but . . . public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property and houses of worship, institutions of purely public charity, (and) public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding . . .; MINN. STAT. ANN. § 272.02 (Supp. 1961); "All property described in this section to the extent herein limited shall be exempt from taxation: . . . (3) All public hospitals; (4) All academies, colleges, and universities, and all seminaries of learning; (5) All churches, church property, and houses of worship; (6) Institutions of purely public charity; (7) All public property exclusively used for any public purpose; . . ."

<sup>2</sup> IOWA CODE § 427.1 (1962).

<sup>3</sup> Samuelson v. Horn, 221 Iowa 208, 265 N.W. 168 (1936).

<sup>4</sup> Readlyn Hospital v. Hoth, 223 Iowa 341, 272 N.W. 90 (1937). A doctor had been using two houses in Readlyn for his office, residence and hospital. He incorporated, describing the operation as Readlyn Hospital for benevolent, charitable and scientific purposes, not for pecuniary profit. He used the houses as before, showing a loss on the hospital, but not showing loss on his office practice. He claimed exemption from property tax. Held, taxable as being partly used for pecuniary profit, and not solely for charitable or benevolent purposes.

charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment."

Application of the "solely used for appropriate objects" phrase of the statute has been before the Iowa Court several times. Real property owned by a college fraternity and used by it to house its members while in school was taxable.<sup>5</sup> Church owned real property used to house professional employees of the church is tax exempt.<sup>6</sup> Lake property owned by a tax exempt lodge and used by it for a few days each year to hold its annual convention and the rest of the season used by its members and their families as a resort, was held taxable.<sup>7</sup> A corporation may not rely on the recitation of its objects and purposes in its Articles of Incorporation to obtain tax exemption on its real estate, but the actual use of the real estate will determine its tax status.<sup>8</sup> Where real estate was conveyed to a church with no restriction on its use, and the church was neither using it nor had it determined to use it for church purposes, the real estate was taxable.<sup>9</sup> An endowment fund administered by the trustees of a religious organization for the benefit of aged ministers is not exempt from taxation.<sup>10</sup>

The words in this subsection "not leased or otherwise used with a view to pecuniary profit" have been said by the Iowa Court to require that property of a charitable organization shall not be tax exempt where it is leased or is otherwise used with a view of pecuniary profit.<sup>11</sup> Land owned by a church and rented for money return, the net income being devoted to the benefit of a religious institution, is subject to taxation.<sup>12</sup> A portion of an American Legion Hall was permanently rented and ruled taxable, while the portion of the same building used for Legion purposes was ruled tax exempt.<sup>13</sup> A later and an apparently conflicting opinion on the same subject held that where part of a Masonic Lodge Building was leased for profit and

<sup>5</sup> Theta Xi Building Association of Iowa City v. Board of Review, 217 Iowa 1181, 251 N.W. 76 (1933). This case does not indicate what the result would be if the college were to own the fraternity house as part of its endowment fund and rent it to the fraternity.

<sup>6</sup> Trustees of Griswold College v. State, 46 Iowa 275 (1877); Cook v. Hutchins, 46 Iowa 706 (1877).

<sup>7</sup> Lacy v. Davis, 112 Iowa 106, 83 N.W. 784 (1900). Templar Park, on the shores of Spirit Lake, owned by Knights Templar was the subject of this case. The question was not the objects of the organization, but the use of the property.

<sup>8</sup> See case cited in note 4, *supra*.

<sup>9</sup> Kirk v. St. Thomas Church, 70 Iowa 287, 30 N.W. 569 (1886). Superficially, this case appears in conflict with the National Bank case in note 17, *infra*. However the cases are distinguishable, as here the determination had not been made as to the use of the property, leaving it taxable, while in the case in note 17, *infra*, the decision as to the use of the property had been made, which irrevocably committed the funds to a public, charitable use, making the property exempt from the monies and credits tax.

<sup>10</sup> 1930 Op. ATTY. GEN. 45.

<sup>11</sup> See case cited in note 4, *supra*.

<sup>12</sup> 1924 Op. ATTY. GEN. 389.

<sup>13</sup> 1924 Op. ATTY. GEN. 233. The fact that the property was occasionally rented for entertainments did not remove the tax exempt status.

part used for Lodge purposes, the entire building was taxable.<sup>14</sup> An organization functioning as a private school devoted solely to literary and scientific purposes is not tax exempt when it is operated with a profit motive.<sup>15</sup>

Progressing to the phrase "shall be filed for record" occurring later in the quoted subsection, the Court relied on the recording of title issue in declaring taxable lots which were used by a church but recorded in the pastor's name. Lots upon which the church was built were recorded in the bishop's name and were held non-taxable because they were "dedicated" to the use of the church. Normally the tax exempt body must have at least an equitable interest before the property will be exempt.<sup>16</sup>

Section 427.1 (10) of the Iowa Code in pertinent part exempts from tax, under appropriate circumstances, the moneys and credits of religious and charitable organizations if such property belongs exclusively to the institutions and is devoted solely to sustaining them. This section has been specifically dealt with by the Iowa Court. Where an estate was devised in trust for the express purpose of establishing a nonprofit city hospital, and where the completed hospital was to be a charitable institution, funds held in trust for establishing and maintaining the hospital were exempt from taxation though the institution was not yet established. Generally, the right to tax exemption for funds in the hands of a trustee is determined by the nature of the beneficial interest.<sup>17</sup>

Another much defined subsection of the exemption statute deals with property held by colleges as a part of their endowment funds. Section 427.1 (11) of the Iowa Code exempts: "Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township." Land belonging to the endowment fund of a college may be rented for money return without

<sup>14</sup> 1930 Op. Atty. Gen. 117. Both organizations qualify as tax exempt, but the leasing of part of the building controls. The apparent contrast here indicates a situation in which there is room for clarification. In the several jurisdictions there are cases indicating trends in each direction. Iowa, however, points up the importance of "use" as the governing factor determining tax exemption. If this reasoning is followed, the decision will be to exempt the part of the building for charitable purposes and tax the leased area. If the decision is delayed and the general trend for strict interpretation of exemption statutes is allowed full play, all of a building with dual usage will probably be taxed. See Annot., 159 A.L.R. 685 (1945); 2 COOLEY, THE LAWS OF TAXATION §§ 682-688 (4th ed. 1924). Comment, *Exemption of Educational, Philanthropic and Religious Institutions from State Real Property Taxes*, 64 HARV. L. REV. 288 (1950).

<sup>15</sup> *In re Dille*, 119 Iowa 575, 93 N.W. 571 (1903). The exemption statute aims to encourage institutions of learning, but only if their property shall be dedicated solely to the appropriate purposes and shall not be leased or otherwise used with a view to pecuniary profit.

<sup>16</sup> *Laurent v. City of Muscatine*, 59 Iowa 404, 13 N.W. 409 (1882). Dicta in the case stated that under the facts as stated, if it were material to the case, the lots owned by the bishop would be taxable because there was no indication that the church had any equitable interest therein.

<sup>17</sup> *National Bank of Burlington v. Huneke*, 250 Iowa 1030, 98 N.W.2d 7 (1959). This case overrules a holding of an earlier case, which held that the institution must be in operation before the use could be established and the tax exemption achieved on the moneys and credits held in trust before the institution was established.

damaging its tax exempt status.<sup>18</sup> The word "owned" in this subsection has been a stumbling block for some litigants. Where a nonprofit college was deeded realty under a trust agreement providing for annual payments to the grantors, the college did not become an owner within the statute and was not exempt.<sup>19</sup> Other problems have arisen under this exemption. Where a grantor deeds land in fee to a college as part of its endowment fund, providing that the college grant an annuity to the grantor, the actual value of the annuity is taxable to the recipient. If the land is granted in fee and a life estate reserved to the grantor, the land is taxed to the holder of the life estate as though he were holder of the fee.<sup>20</sup> College lands being held "for sale" rather than use are not tax exempt, the reasoning being that they are held with a view to pecuniary profit.<sup>21</sup> A university may lease land belonging to its endowment fund, and in so doing maintains its tax exempt status.<sup>22</sup>

Libraries have been separately dealt with in section 427.1 (8) of the Iowa Code. This subsection exempts: "All grounds and buildings used for public libraries . . . and libraries . . . owned and kept by private individuals, associations, or corporations, for public use and not for private profit." Under this provision land held by a public library in its endowment fund is not subject to taxation.<sup>23</sup>

In light of the Iowa decisions it would appear that the Iowa Court would reach the same result as the Minnesota Court in the main case. As an example of the similarity of the two courts' holdings, in *Griswold College*<sup>24</sup> the Iowa Court emphasizes that the test for tax exemption must be, "is the use to which the property is put proper and appropriate to effectuate the objects of the institution". This language is parallel to the Minnesota Court's holding in *Fairview Hospital* that the test must be "is the use to which the property is put reasonably necessary for accomplishment of the principal purposes of the hospital". It is reasonable to expect this result as the two statutes are quite similar in language.<sup>25</sup>

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<sup>18</sup> 1928 Op. Atty. Gen. 79. The property that is exempt is not limited to non-income property. The ruling further suggests that such property would not be of much value as an endowment unless rents or profits could be derived therefrom. The fact that there would still be considerable value to the owning organization even if taxes were assessed, though the net would be lower, was not brought out in the opinion.

<sup>19</sup> Trustees of Iowa College v. Baillie, 236 Iowa 235, 17 N.W.2d 143 (1945). The fatal provision here is that the grantors were to receive annual payments based on the value of the property conveyed. The case also obliquely refers to the college maintaining its tax exemption on property belonging to its endowment funds even though the property is rented for pecuniary return and the money used for scholarships and other college uses.

<sup>20</sup> 1920 Op. Atty. Gen. 351.

<sup>21</sup> Foy v. Coe College, 95 Iowa 689, 64 N.W. 636, (1895). It appears that the Court here may be lapsing back to the charitable institution provision in subsection 427.1 (9), rather than the college endowment fund subsection 427.1 (11).

<sup>22</sup> Frost v. Bennett, 199 Iowa 744, 202 N.W. 776 (1925). Where land was owned by Des Moines University and leased to another for 99 years, with land to revert to the University, no tax was levied against the University on the land.

<sup>23</sup> Webster City v. Wright County, 144 Iowa 502, 123 N.W. 193 (1909).

<sup>24</sup> See cases in note 6, *supra*.

<sup>25</sup> See Minnesota provision in note 1, *supra*, and Iowa Code §§ 427.1(8)-427.1(11) (1962).

The property tax exemption statutes dealt with are based on the philosophy that the favored institutions are performing essential functions which otherwise would necessarily be carried out at great expense to the taxpayer and thus the institutions are deserving of special consideration.<sup>26</sup> These statutes and their interpretative Court decisions hold that the property to be exempt from tax must be directly devoted solely to the appropriate use of the institution, though there is some modification of this stand in the allowance made to colleges so that their endowment fund property can produce income without jeopardizing the exempt status of the property. The decisions seem to infer, however, that the income from this endowment fund property will be channeled into the appropriate uses of the organization and not used for profit of any individual or group.

It is to be assumed that the onerous burden of ever increasing property taxes will cause further interest in this type of legislation as Iowa attempts to secure adequate funds in an equitable manner to assure proper growth and development for the future. In all cases taxation is the rule and exemption the exception. It appears that the legislature intends that this principle of the law will not be relaxed.<sup>27</sup>

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<sup>26</sup> Kendrick, *Property Tax Exemptions and Exemption Policies*, in 1958 NAT. TAX ASS'N PROC. 84; Wolkstein, *Recent Problems and Developments in Property Tax Exemptions*, in 1951 NAT. TAX ASS'N PROC. 167; TOBIN, HANNAN AND TOLMAN, *THE EXEMPTION OF PRIVATELY OWNED REAL PROPERTY USED FOR RELIGIOUS, CHARITABLE AND EDUCATIONAL PURPOSES IN NEW YORK STATE, PART III* (1934); Stimson, *The Exemption of Property from Taxation in the United States*, 18 MINN. L. REV. 411 (1934).

<sup>27</sup> IOWA CODE §§ 427.1(23), 427.1(26) (1962).

