



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

Honorable Jim D. Bowmer  
County Attorney  
Bell County  
Belton, Texas

Opinion No. V-09

In Re: Exemption from taxation of certain property owned by the Episcopal Church at Belton, Texas, used as a dormitory for Episcopal girls attending Mary Hardin Baylor College.

Dear Sir:

You present for the opinion of this department the question contained in your letter of December 20, 1946, which is copied below for a statement of the facts upon which our opinion will be based. Your letter follows:

"The tax assessor-collector of this county has asked me to obtain your opinion on the following tax problem which has arisen.

"The Episcopalian Church Diocese for Texas owned and maintained a house in Belton, Texas, from about 1929 to about 1940, as a dormitory for Episcopalian girls attending Mary Hardin Baylor College, a Baptist college. It is presumed they paid their room and board in the same manner as if they had been residing at the normal college-owned dormitory. The dormitory itself was not an official part of the school. The school itself, its dormitories, etc., are tax exempt. The Episcopalian Church has not rendered this house for taxation, and has recently sold it. The problem now arises as to its exemption from taxes during the years it was so used.

"We would greatly appreciate your opinion as to the propriety of exempting this property from State and County taxes when it was used for the above purposes, both prior to and after the 1931 amendments to Article 7150."

(1) It appears from the admitted facts that the Episcopal Church, Diocese of Texas, owned and maintained a house in Belton, Texas, from 1929 to about 1940, as a dormitory for Episcopal girls attending Mary Hardin Baylor College, a Baptist College;

(2) The girls paid room and board in the same manner as if they had been residing at the dormitories owned and maintained by the College;

(3) The dormitory was in no way an official part of the College; and

(4) The Episcopal Church did not render this dormitory for taxation during the time it was so owned and maintained.

The question presented is the status of this property for ad valorem taxes for the period of time it was thus owned and maintained by the Episcopal Church; that is, whether taxable or exempt.

Certain types of property are exempt from taxation by the express terms of the Constitution, and this the Legislature has no power to tax. Lower Colorado River Authority v. Chemical Bank & Trust Co. (Supreme Court) 190 S. W. (2d) 48. Other kinds of property, and the property here in question is of that character, may be exempt from taxation by the Legislature only by the authority conferred upon it under the Constitution of this State. This power is derived from Section 2 of Article VIII of the Constitution, which reads in part as follows:

" . . . the legislature may, by general laws, exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; . . ."

Pursuant to the authority thus conferred upon the Legislature by Sec. 2 of Article VIII of the Constitution as quoted above, the Legislature enacted Art. 7150, R. C. S., in language in part as follows:

"All public colleges, public academies, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, and all such buildings used exclusively and owned by persons or associations of persons for school purposes;"

If the dormitory here in question is exempt from ad valorem taxes, it must be by virtue of the terms of Art. 7150 quoted above. The exemption from taxation of dormitories owned and maintained by the College proper is not questioned. But does the same rule apply to the dormitory here in question owned by the Episcopal Church, a religious organization, that has no official connection with the College? We have no difficulty in classifying the Episcopal Church as an "association of persons," but our difficulty arises in determining whether or not the dormitory is used "exclusively for school purposes," and whether or not under the terms of Art. 7150, such building must be used and maintained by the College as contra distinguished from owned and maintained by a separate religious organization which has no official connection with the College. A careful search of the opinions of this department and decisions of our appellate courts fail to reveal that this identical question has been passed upon by this department or the courts of this State. We think it may be correctly said that the young ladies occupying this Episcopal Church dormitory constitute as much a part of the student body of the College as do the young ladies occupying the dormitories owned and maintained by the College. If one is used for school purposes, we see no plausible reason why the other might not likewise be so considered.

Courts of other jurisdictions have had occasion to consider what constitutes "school purposes" under certain tax exemption statutes similar to the one we have in Art. 7150, and we take occasion here to note some of these decisions. In the case of *In Re: Syracuse University*, 212 N. Y. S. 253, (Supreme Court, Appellate Division, State of New York) the Court made a comprehensive statement as to the meaning of the term "school purposes" in the following language:

"Dormitories, dining halls, hospitals, training schools for nurses and stores for supplies, and athletic fields used by the students for athletic games and exercises, and not as sources of institutional income, are essential parts of universities and colleges; for education contemplates, not only the mental and moral, but the physical training and welfare, and the proper maintenance of those in attendance upon the institution. *People ex rel. Board of Trustees of Mt. Pleasant Academy v. Mezger et al.*, 98 App. Div. 237, 90 N.Y.S. 488, affirmed 181 N.Y. 511, 73 N.E. 1130; *State v. Carleton College*, 154 Minn. 280, 191 N.W. 400; *People ex rel. Adelphi College v. Wells et al.*, 97 App. Div. 312, 89 N.Y.S. 957, affirmed 180 N.Y. 534, 72 N.E. 1147. It does not appear that any profit is derived by the university from amounts paid by students for residences, food, or hospital care.

"So, too, the university farm, used for demonstration and instruction purposes, is an appropriate part of the university equipment, and comes within the same general category hereinbefore mentioned.

"The occupation by the chancellor of the official residence furnished him by the university is clearly an educational purpose, and makes that property exempt from taxation under the statute. *In re Mary Immaculate School of Eagle Park*, 188 App. Div. 5, 175 N.Y.S. 701, and cases cited."

In the case of State v. Fisk University, 10 S.W. 284, (Supreme Court of Tennessee) the Court said:

"To give the language of the constitution the strict construction contended for by the complainants would lead to excluding every portion of the property not actually used in education. It would include only school buildings, desks, books, etc., and would exclude ornamental promenade grounds, play-grounds, and gymnasium buildings, and infirmary or hospital buildings for the pupils. The agreed case fails to show that any of this property is used for profit, or for purposes not embraced within the duties of the defendant, as an institution of learning.

"There are many adjudged cases from different states, and much in the textbooks, which are not easily to be reconciled, growing out of exemptions somewhat similar to those under consideration here. It is not our aim at this time to discuss these cases, nor to define nor limit what uses may or may not be within the exemptions referred to. We only decide that the intention of the legislature must govern in ascertaining the extent of such exemptions, and that in arriving at such intention the same strictness of construction will not be indulged where the exemption is to religious, scientific, literary, and educational institutions that will be applied in considering exemptions to corporations created and operating for private gain or profit...."

A more recent case by the Supreme Court of Tennessee than the one first noted is the case of City of Memphis v. Alpha Beta Welfare Association, 126 S.W. (2d) 323, in which we find a statement of facts and a pronouncement of the law which we deem helpful in consideration of the problem here considered, as follows:

"The Alpha Beta Chapter of the Phi Chi Medical Fraternity in the Medical School of the University of Tennessee, at Memphis, is unincorporated. Its membership is made up of the alumni of the Phi Chi Fraternity re-

siding in the City of Memphis, who are in good standing, and the active members of the chapter are the undergraduates of the Medical School.

"The specific purpose of the Phi Chi Medical Fraternity is to promote the welfare of medical students morally and scientifically. For admission to the active chapter, a student must be desirable from a scholastic and moral standpoint. No one is eligible for membership in the active chapter except matriculants in the University of Tennessee Medical Department.

"Prior to the organization of the Association, in 1930, the student members of the Alpha Beta Chapter of the Phi Chi Fraternity were living in boarding houses, scattered around over the city, the University being without dormitories. As the result of the appeal of the then undergraduate members of the Fraternity, a number of the leading doctors of Memphis interested themselves in organizing the Welfare Association in order that suitable property might be acquired and the student members of the Fraternity housed under one roof. This was considered very essential to the welfare of these members and to the successful carrying out of the purposes of the Fraternity.

"It appears that about fifty students live in the house in question and each one pays \$37.50 per month, which covers board, lodging, and Fraternity dues. They maintain a mess, with which the Association has nothing to do. Supervision is exercised by the Association over the physical condition of the premises and over the conduct of the student residents. A high standard of moral and ethical conduct is demanded.

"It is shown that the alumni of the Phi Chi Chapter have furnished the students with a considerable number of books, the majority of which are medical in their

scope; but others are upon subjects of general information and interest. Additional books are being added to this library from time to time.

"No teaching staff is maintained by the Association or by the Fraternity. No classes of any kind are conducted on the premises. However, other things of a cultural and educational nature are relied on as entitling the Association to tax exemption. . . ."

"In the instant case, both the trial judge and the Court of Appeals have determined that the property in question is used exclusively for educational purposes and with this finding we feel constrained to concur..."

In the case of Ward Seminary for Young Ladies v. Mayor, et al., of Nashville, 167 S.W. 113, (Supreme Court of Tennessee) the following general statement was made as to what constitutes "school purposes":

"The result of the whole case is that we hold the property of the complainant which is in reality used in educational work, such as the school buildings, dormitories, exercise grounds and the usual and appropriate equipment of this character of institution, to be exempt from taxation..."

In the recent case of Harris v. City of Fort Worth, 180 S.W. (2d) 131, Justice Sharp of the Supreme Court, in approving what Mr. Justice Robertson said in the early case of Cassiano v. Ursuline Academy, 64 Tex. 673, said:

"It has been the policy of the state since 1849 to encourage educational enterprises by exempting them from any share of the burdens of government. Pasch. Dig., arts. 5147, 5148, 7485, 7688. . . ."

"The education of the masses is now recognized as a function of state government. Those who, from charitable considerations, to forward sectarian views, or for private profit, have organized or conducted

schools, have assisted the state in the performance of a duty it owes to its citizens which cannot be too thoroughly performed, and which the state has never assumed that it had either the means or the machinery of doing sufficiently well without private assistance. The Ursuline Academy is performing its part in this branch of the public service, and it should rather be encouraged by aids, than impaired in its usefulness by a tax upon its pitiful revenues."

We do not think that Justice Sharp meant to abrogate the rule of strict construction against tax exemptions which has always prevailed in this State, but merely intended the above statement to evidence the liberality of the Legislature in extending the exemptions authorized in Art. 7150.

We think Texas will compare favorably with any state in the Union in the number, efficiency, and value of educational institutions owned and maintained by religious organizations. Such schools and colleges have been fostered and built up, and it has been the policy of our State to encourage them. It is a matter of common knowledge that there has been established and maintained for the laudable purpose of better protecting and conserving the religious, moral, and physical well being of young men and young women attending various educational institutions in this State, dormitories, which have always been considered exempt from taxation. The Catholic Church owns and maintains at the University of Texas Newman Hall, a Catholic dormitory for girls of that faith attending the University of Texas; the Scottish Rite, a Masonic organization, owns and maintains at the University of Texas a dormitory for girls, although not exclusively for girls of Masonic family affiliation, but primarily for that purpose; and the Methodist Church owns and maintains Carothers Dormitory at the University of Texas and at the Texas College for Women at Denton, Texas, a dormitory for young ladies of the Methodist Church, and as far as we know there has not been any attempt by the taxing authorities to impose ad valorem taxes upon these various dormitories, although they have no official connection with the respective university or college. These dormitories have been thus owned and maintained for many years, and we must assume at all times with the knowledge and approval

of the Legislature as to their tax exempt status. To now hold such dormitories subject to ad valorem taxes would in our view depart from what we believe to be the well established and salutary policy of this State. We, therefore, put aside as immaterial the fact that this dormitory is owned by the Episcopal Church, which has no official connection with Mary Hardin Baylor College.

It will be observed that the language of Art. 7150, R. C. S., uses only the term "buildings" as comprehended within the exemption, but this need not give us concern because the courts have settled this question in the early case of Cassiano v. Ursuline Academy, supra, from which we quote as follows:

"The word building is a term as broad as the word house. House has been construed to mean both the structure and the land on which it stands. Gerke v. Purcell, 25 Ohio St., 227; Mullen v. Comm'rs., 85 Pa.St., 288; Trinity Church v. Boston, 118 Mass., 164, and cases cited in it."

Therefore, the ground upon which the building is located and the building are both exempt under the Constitution and statutes of this State, but only so much ground as is necessary for the intended and reasonable use of the building may be exempt.

In determining whether or not this dormitory, owned, maintained and operated by the Episcopal Church, is used exclusively for school purposes within the limits of the Constitution and statutes of this State, we are constrained to follow what we conceive to be the most modern and reasonable construction placed upon the term "school purposes" by our courts, and prefer the construction that whatever fosters the moral, spiritual, and physical well being of the students is as much a "school purpose" as the actual academic instruction which the students receive. We assume, as we think your opinion request does, that this dormitory is not owned, operated and maintained by the Episcopal Church for profit, but exclusively for school purposes consistent with the aims we have expressed above as to what constitutes such a purpose. We therefore hold that this dormi-

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tory is exempt from ad valorem taxes during the time it was owned, maintained and operated by the Episcopal Church.

SUMMARY

A dormitory owned, maintained and operated by the Episcopal Church, for use by the girls of Episcopal families attending Mary Hardin Baylor College at Belton, Texas, is exempt from ad valorem taxes, and this notwithstanding it has no other official connection with the College, and comes within the purview of the Constitution, Section 2 of Article VIII, and the statutes, Article 7150, R. C. S., of this State as a building used exclusively for school purposes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

  
L. P. Lollar  
Assistant

LPL:AMM

APPROVED JANUARY 27, 1947

  
ATTORNEY GENERAL

APPROVED  
OPINION  
COMMITTEE  
By O. S.  
Chairman