Case Western Reserve Law Review

Volume 14 | Issue 3

1963

Exemption from Taxation of Residences Owned by Charitable, Religious, and Educational Institutions in Ohio

Robert A. Lenga

NOTES

Exemption from Taxation of Residences Owned by Charitable, Religious, and Educational Institutions in Ohio

Some confusion exists in Ohio as to which residences owned by charitable, religious, and private educational institutions are exempt from real property taxes. Such confusion is to be expected since past decisions on this subject have been inconsistent and only the most careful study of the cases reveals any unifying principles. The purpose of this note is to attempt to uncover the criteria adopted by the courts in determining whether to exempt such residences.

Statistics disclosing the assessed valuation of exempt real property in Ohio emphasize the importance of terminating this confusion. In 1961, out of the total assessed valuation of real property in Ohio of $18,576,701,212, approximately thirteen per cent ($2,802,445,009) was exempt from taxation. Of the total amount exempt, 8.9 per cent ($247,326,470) represented the value of property owned by private charitable institutions, 16.38 per cent ($458,953,330) the evalue of property owned by religious institutions, and 5.33 per cent ($149,396,215) the value of property owned by private academies and colleges.[1]

The scope of this note is limited to a discussion of those cases in which exemption of residences was sought under Ohio Revised Code sections 5709.07[2] and/or 5709.12[3] (Ohio General Code sections 5349 and/or 5353[4]). To promote the understanding of why certain types

1. Ohio B.T.A. Rep. table 725 (1961) (unpublished statistics available at the County Affairs Division of the Ohio Department of Taxation). The greatest percentage of the property exempted was owned by various governmental subdivisions, federal, state, and local. Exemption was probably granted pursuant to OHIO REV. CODE § 5709.08.

2. "Public schoolhouses and *houses used exclusively for public worship*, the books and furniture therein, and the ground attached to such buildings necessary for the proper occupancy, use, and enjoyment thereof, and not leased or otherwise used with a view to profit, *public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning*, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state . . . ." OHIO REV. CODE § 5709.07. (Emphasis added.)

3. "Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation." OHIO REV. CODE § 5709.12.

4. In regard to the continuity of interpretation of related sections in the General Code and the Revised Code, OHIO REV. CODE § 1.24 provides:

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statuatory provisions, and not as new enactments."

of residences have been held exempt and others have not, some of the basic rules that have evolved in decisions interpreting sections 5709.07 and 5709.12 will be discussed prior to examining the decisions specifically involving residences.

REAL PROPERTY TAXATION EXEMPTIONS IN GENERAL UNDER OHIO REVISED CODE SECTIONS 5709.07 AND 5709.12

Ohio Revised Code sections 5709.07 and 5709.12 have their origin in article XII, section 2 of the Ohio Constitution, which reads:

> [W]ithout limiting the general power, subject to the provisions of article I [Bill of Rights] of this constitution, to determine the subjects and methods of taxation or exemption therefrom, general laws may be passed to exempt burying grounds, public school houses, *houses used exclusively for public worship, institutions used exclusively for charitable purposes,* and public property used exclusively for any public purpose . . . .[4] (Emphasis added.)

The Ohio Supreme Court has determined that the above provision limits the power of the General Assembly to exempt real property to the types specified,[5] although the language of the provision, "without limiting the general power . . . to determine the subjects and methods of taxation or exemption therefrom . . . . ," would seem to indicate a contrary intent on the part of the drafters.[6]

The Ohio Supreme Court has also adhered to the rule that exemption statutes are to be strictly construed against the one seeking exemption.[7] The following language is typical:

---

5. See National Headquarters Disabled Am. Veterans v. Bowers, 171 Ohio St. 312, 314, 170 N.E.2d 731, 733 (1960); Youngstown Metropolitan Housing Authority v. Evatt, 143 Ohio St. 268, 274, 55 N.E.2d 122, 125 (1944).

6. See Caren, *Constitutional Limitations on the Exemption of Real Property from Taxation,* 11 OHIO ST. L.J. 207 (1950), for the history of article XII, section 2 of the Ohio Constitution and for a vigorous criticism of the court's position on this point.

It is interesting to note that the supreme court has taken the opposite position regarding exemption of personal property and has ruled that article XII, section 2 does not limit the power of the General Assembly to exempt it. Zangerle v. Cleveland, 145 Ohio St. 347, 61 N.E.2d 720 (1945).

7. Some states have expressed a preference for a liberal construction of exemption statutes. Note, *Exemption of Educational, Philanthropic and Religious Institutions from State Real Property Taxes,* 64 HARV. L. REV. 288 (1950). A few early Ohio cases stated that the rule of strict construction of exemption statutes should be relaxed in the case of religious, charitable, and educational institutions. See, *e.g.,* Watterson v. Halliday, 77 Ohio St. 150, 169, 82 N.E. 962, 965 (1907); Kenyon College v. Schnebly, 12 Ohio C.C.R. (n.s.) 1 (Cir. Ct.), *aff'd mem.,* 81 Ohio St. 514, 91 N.E. 1138 (1909).

This preference for a liberal construction is based in part upon the judicial desire to give effect to the intent of the legislature and in part upon an adherence to the so-called "humanitarian theory" of tax exemption for charitable institutions. The "humanitarian theory" is the label given to the belief expressed in some states that the government should encourage all activities devoted to humanitarian goals. Note, 64 HARV. L. REV. 288, 288-89 (1950). For a vigorous criticism of the "humanitarian theory" of charitable tax exemptions and the

> [It is a] . . . well established principle that taxation is the rule and exemption the exception. Therefore, property which is claimed to be exempt from the payment of taxes must come squarely within exemption provisions, since language which relieves from taxation is to be strictly construed.[8]

In nearly every decision involving Ohio Revised Code sections 5709.07 and 5709.12, the Ohio Supreme Court has stated that the use of the property is the basic test of exemption.[9] It must be "used exclusively for charitable purposes" or, under section 5709.07,[10] "exclusively for public worship." "The *use,* not the *ownership,* is the test. It is the property, not the institution, that is being taxed."[11]

What constitutes a use for charitable purposes is largely a case by case proposition. However, "the words 'charitable purposes' are usually understood to include those purposes, the accomplishment of which is beneficial to the community."[12] To be exempt, the property itself must be used for such purposes. It is not enough that the proceeds from the use of the property are ultimately devoted to charity if the property is

---

resultant liberality in granting such exemptions, see Killough, *Exemptions to Education, Philanthropic and Religious Organizations,* in TAX EXEMPTIONS 23 (1939).

In those states like Ohio which have required that exemption statutes be strictly construed and which have been more stringent in allowing exemptions, the so-called "public burden" theory has been the expressed reason for granting charitable exemptions. This more basic and more widely accepted theory of charitable exemption, Note, 64 HARV. L. REV. 288, 288-89 (1950), has been expressed in the following language: "the fundamental reason for the exemptions is that the institutions under consideration relieve society from the burdens which otherwise would fall upon the state . . . ." Heisel, *Exemption from Taxation of Property Used for Religious, Educational and Charitable Purposes in Ohio,* 3 U. CINC. L. REV. 40 (1929).

8. Crown Hill Cemetery Ass'n v. Evatt, 143 Ohio St. 399, 403, 55 N.E.2d 660, 662 (1944).

9. There is an exception to the requirement of exclusive use. If a corporation's charter was granted by the state prior to 1851, at which time the Ohio Constitution was amended restricting the General Assembly's power to grant exemptions, and if the charter provided that the corporation's property was to be exempt from taxation, that land remains exempt so long as the corporation owns it, even if the property is not used exclusively for charitable purposes. This rule is based upon the holding in the famous case of Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819), that the charter of a corporation is a contract protected against impairment by article I, section 10 of the United States Constitution (article II, section 28 of the Ohio Constitution). See New Orphans' Asylum of Colored Children v. Board of Tax Appeals, 150 Ohio St. 219, 224-25, 80 N.E.2d 761, 764 (1948).

10. The words "public schoolhouses" in OHIO REV. CODE § 5709.07 mean only those schoolhouses which "belong to the public, such as are designed for the schools established and conducted under the authority of the public." Gerke v. Purcell, 25 Ohio St. 229, 424, (1874); *In re* Sisters of Mercy, 17 Ohio Supp. 88 (B.T.A. 1946). But it was held in Ursuline Academy v. Board of Tax Appeals, 141 Ohio St. 563, 569, 49 N.E.2d 674, 676 (1943), that the property of private colleges and academies might be exempted under the statute if it is used exclusively for charitable purposes, the test for exemption under OHIO REV. CODE § 5709.12. Therefore, since the test of exemption is the same under both statutes, it is immaterial under which statute the exemption of such school property is sought.

11. National Headquarters Disabled Am. Veterans v. Bowers, 171 Ohio St. 312, 314-15, 170 N.E.2d 731, 733 (1960). See also Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 429, 439, 183 N.E.2d 773, 780 (1962); Columbus Youth League v. County Bd. of Revision, 172 Ohio St. 156, 159, 174 N.E.2d 110, 111 (1961).

12. Cleveland Osteopathic Hosp. v. Zangerle, 153 Ohio St. 222, 233, 91 N.E.2d 261, 267 (1950) (dissenting opinion).

immediately being used for commercial purposes or being rented for private use.[13]

The fact that the owning organization requires some of the beneficiaries of its services to pay for those services does not necessarily affect the organization's exempt status.[14] But if all the beneficiaries pay, the courts are likely to deny exemption, holding that the organization is using its property to make a profit and not exclusively for charitable purposes.[15] On the other hand, the Ohio Supreme Court has also held, somewhat inconsistently, that the mere fact that an organization derives some profit from the use of its property will not necessarily negate exemption if that profit is used to support the charitable functions of the organization and if profitmaking is not the main purpose of the organization's existence.[16]

Two other general principles concerning real property tax exemptions should be mentioned at this point. First, it is a long standing rule in Ohio that a statute which exempts property from taxation applies only to those taxes levied for revenue purposes and does not extend to local assessments, which are imposed only on that property which benefits from a particular improvement.[17] Second, where a building is being used for both exempt and nonexempt purposes, it may be "split" along horizontal or vertical lines so that part of it may be exempt and part of it taxed.[18] However, the property may not be "split" on a percentage basis.[19]

RESIDENCES

A search of the cases construing Ohio Revised Code sections 5709.07 and 5709.12 and their General Code predecessors reveals twenty-seven

13. Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 429, 440, 183 N.E.2d 773, 780 (1962); Goldman v. Friars Club, Inc., 158 Ohio St. 185, 196, 107 N.E.2d 518, 523 (1952); Benjamin Rose Institute v. Myers, 92 Ohio St. 252, 266, 110 N.E. 924, 928 (1915). Ohio is in accord on this point with the great weight of authority throughout the nation. See Annot., 54 A.L.R.2d 996, 998 (1957).

14. See College Preparatory School for Girls v. Evatt, 144 Ohio St. 408, 413, 59 N.E.2d 142, 145 (1945); O'Brien v. Physicians' Hosp. Ass'n, 96 Ohio St. 1, 6, 116 N.E. 975, 976 (1917).

15. Beerman Foundation, Inc. v. Board of Tax Appeals, 152 Ohio St. 179, 181-82, 87 N.E.2d 474, 475-76 (1949); *In re* Case Institute of Technology, 84 Ohio L. Abs. 131, 135 (B.T.A. 1960). *But see* Beerman Foundation, Inc. v. Board of Tax Appeals, 152 Ohio St. 179, 183, 87 N.E.2d 474, 476 (1949) (dissenting opinion).

16. See Cleveland Osteopathic Hosp. v. Zangerle, 153 Ohio St. 222, 233, 91 N.E.2d 261, 266 (1950) (dissenting opinion); American Issue Publishing Co. v. Evatt, 137 Ohio St. 264, 28 N.E.2d 613 (1940).

17. DuBois v. Baker, 52 Ohio App. 148, 3 N.E.2d 552 (1935); Lima v. Cemetery Ass'n, 42 Ohio St. 128, 130-31 (1884). In taking this position, the Ohio courts seem to be in harmony with the courts in the majority of jurisdictions in the United States. See Annot's, 108 A.L.R. 284 (1937); 62 A.L.R. 328 (1929); 34 A.L.R. 636, 687 (1925).

18. See Welfare Fed'n v. Peck, 160 Ohio St. 509, 510, 117 N.E.2d 1, 1-2 (1954); Welfare Fed'n v. Glander, 146 Ohio St. 146, 181-82, 64 N.E.2d 813, 828 (1945) (dissenting opinion); Cleveland Library Ass'n v. Pelton, 36 Ohio St. 253, 258 (1880); OHIO REV. CODE § 5713.04 (Supp. 1962).

19. Goldman v. L. B. Harrison, 158 Ohio St. 181, 184, 107 N.E.2d 530, 532 (1952).

reported decisions in which exemptions were sought for real property used as residences.[20] In nine of these cases, the property was held to be exempt; in eighteen, the property was held nonexempt.

As previously stated,[21] the property, to be exempt, must be "used exclusively for charitable purposes" or "exclusively for public worship."[22] The courts have had considerable difficulty determining when residences are to be exempt under these tests and, correspondingly, have not been lucid in establishing criteria for making such a determination. However, as the following analysis of the cases will indicate, a good deal of weight has been given to whether providing the residence was necessary to the owning institution's charitable, educational, or religious functions.[23] If there were no such functions to which the residence could be necessary, the courts have then looked to see if the occupants themselves were "objects of charity" and if, therefore, furnishing the residence to them was, in itself, an exclusively charitable use.[24]

Furnishing low-rent housing to the institution's personnel is clearly not in itself using property "exclusively for charitable purposes."[25] The Ohio Supreme Court clearly believes that providing housing for the families of the institution's personnel is not necessary to the performance of the institution's exempt activities.[26]

The criteria have varied somewhat depending upon the nature of the owning institution. Where private schools or hospitals seek exemption of residences, the necessity of the residence to the performance of the school's or hospital's exempt functions has, in the writer's opinion, been decided according to whether the court believed that other schools or hospitals customarily provide such residences. In those cases in which Y.M.C.A.-type institutions have sought exemptions, the court has applied a less stringent test. Instead of necessity to the performance of exempt activities, the test has been whether the residences were "connected with

20. These twenty-seven decisions do not include cases involving sanitariums, old-age homes, and the like, which are clearly exempt. See Humphries v. Little Sisters of the Poor, 29 Ohio St. 201 (1876).

21. See text accompanying notes 9-11 *supra.*

22. This seems to be the principal test used throughout the nation in determining whether residences are exempt from taxation. "Running through the cases which have allowed such property to be exempt is the idea, stated by the court or to be inferred from its opinion, that the particular facility was necessary to the efficient operation of the organization claiming the exemption." Annot., 15 A.L.R.2d 1064, 1065-66 (1951).

23. See, *e.g.*, Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 139-40, 91 N.E.2d 497, 500 (1950) (dissenting opinion); Aultman Hosp. Ass'n v. Evatt, 140 Ohio St. 114, 117, 42 N.E.2d 646, 647 (1942).

24. See Beerman Foundation, Inc. v. Board of Tax Appeals, 152 Ohio St. 179, 182, 87 N.E.2d 474, 476 (1949); Cleveland Branch of the Guild of St. Barnabas for Nurses v. Board of Tax Appeals, 150 Ohio St. 484, 486-87, 83 N.E.2d 229, 230-31 (1948).

25. *Ibid.*

26. See Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 136, 91 N.E.2d 497, 499 (1950).

and incidental to the overall programs carried on within the properties and the charitable nature of each institution as a whole."[27] Moreover, in the case of residences owned by churches, if exemption is sought under Ohio Revised Code section 5709.07, the property must be "used exclusively for public worship."

Since the test of exemption seems to vary somewhat depending upon the nature of the owning institution, the cases can best be studied by grouping them accordingly. Therefore the writer has divided the decisions into five categories depending upon whether the residences are owned by: (1) privately-owned schools; (2) hospitals and related organizations; (3) religious institutions; (4) public and private housing foundations; and (5) Y.M.C.A.-type institutions.

Residences Owned by Schools

In cases in which exemption was sought for school-owned residences, two results have been reached: (1) residences occupied by single students have been held exempt; (2) residences occupied by faculty and other school employees have been held nonexempt.[28]

Faculty Residences

The early case, *Kenyon College v. Schnebly*,[29] is still cited, to no avail however, by the attorneys of private schools seeking exemption for school-owned residences occupied by paid personnel. In that case, exemption was granted for rent-free houses occupied by the college president, the professors and their families, and the head janitor. The then applicable statutory provision, Ohio Revised Statutes section 2732, was not materially different from Ohio Revised Code section 5709.07, but the governing constitutional provision used the words "belonging to institutions of purely public charity" where article XII, section 2 today reads "institutions used exclusively for charitable purposes." The present supreme court has not felt constrained to follow the *Kenyon College* case.[30]

In 1950 the supreme court decided *Western Reserve Academy v. Board of Tax Appeals*[31] and, in doing so, established the rule that furnishing residences for families does not meet the constitutional requirement

27. Goldman v. Friars Club, Inc., 158 Ohio St. 185, 199, 107 N.E.2d 518, 524 (1952).

28. The first case decided in this category, Kendrick v. Farquhar, 8 Ohio 189 (1837), in which residences occupied by the professors of a theological seminary were held nonexempt, is of no significance today because it was decided under a statute no longer existing in any form. The statute provided that, in order for school buildings to be exempt, they had to be used for literary purposes.

29. 12 Ohio C.C.R. (n.s.) 1 (Cir. Ct.), *aff'd mem.*, 81 Ohio St. 514, 91 N.E. 1138 (1909).

30. See Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 429, 441, 183 N.E.2d 773, 880-81 (1962).

31. 153 Ohio St. 133, 91 N.E.2d 497 (1950).

of exclusive use of the property for charitable purposes. Exemption had been sought under General Code sections 5349 and 5353 for residences owned by a college preparatory school for boys and occupied rent free by the school's faculty, administrative officials, and their families. The school required the faculty to perform various functions — teaching, entertaining, and the like — in their residences. Nevertheless, the court held, in effect overruling *Kenyon College v. Schnebly*, that

> residence in a dwelling with a family must necesarily be a private use of the premises. Where the exercise of such private rights constitutes the primary use of property owned by a charitable institution such property is no longer used exclusively for a charitable purpose.[32]

Prior to the decision in the *Western Reserve Academy* case, the Board of Tax Appeals had decided *In re Sister of Mercy*,[33] the only case found that indicates that any faculty residences would be exempt today. Exemption had been sought under General Code sections 5349 and 5353 for a building owned by a Catholic religious order and occupied as a residence by twenty or more nuns employed in Catholic schools one and one-half to two miles away from the residence. The nuns taught ordinary school subjects part-time in the residence building. The Board of Tax Appeals denied exemption because the building was used primarily as a residence and not exclusively for charitable purposes.[34] But the board did state that, if the residence building had been adjacent to the schools in which the nuns taught, it would be exempt on the basis of the supreme court's holding in *Aultman Hosp. Ass'n v. Evatt*.[35] The board pointed out that it had exempted such residences in the past, mentioning as relevant the fact that teaching nuns receive little monetary compensation for their work.[36]

It is enlightening to consider the dictum in *In re Sisters of Mercy*, that teaching nuns' residences have been held exempt, in conjunction with Justice Taft's observation in *Western Reserve Academy* regarding the necessity of the faculty residences in that case to the operation of the school.[37] According to Justice Taft, providing the faculty residences at Western Reserve Academy was more essential to the conduct of the school than providing the faculty residences in the *Kenyon College* case

---

32. *Id.* at 136, 91 N.E.2d at 499.

33. 17 Ohio Supp. 88 (B.T.A. 1946).

34. *Id.* at 91.

35. In the *Aultman* case, the court held that a student nurses residence, located two blocks from the exempt hospital, was exempt because it was "incidental to and a necessary part of the hospital institution itself." Aultman Hosp. Ass'n v. Evatt, 140 Ohio St. 114, 117, 42 N.E.2d 646, 647 (1942).

36. *In re* Sisters of Mercy, 17 Ohio Supp. 88, 91 (B.T.A. 1946) (dictum).

37. Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 139-40, 91 N.E.2d 497, 500-01 (dissenting opinion).

was to the operation of that school, since in the *Kenyon* case the faculty was not required to give instruction in the residences.[38]

As stated in dictum in *In re Sisters of Mercy,* nuns' residences adjacent to schools are exempt because they are necessary to the operation of the schools. But, in *Western Reserve Academy,* faculty residences close to the school were held nonexempt although, as Justice Taft pointed out, they were essential to the operation of the school. By pointing out these contrasting results, the writer does not intend to convey the impression that the necessity of maintaining residences to the operation of the institution is not an appropriate test in the case of school-owned residences. Rather this contrast is mentioned to illustrate the hypothesis that the courts, in determining the necessity of the residences to the operation of schools, have implicitly made that determination according to their belief as to whether most schools provide the type of residences in question. It is to be observed that many Catholic schools have adjoining residences for their teaching nuns whereas most private colleges and academies do not provide such residences.

Student Residences

Cleveland Bible College v. Board of Tax Appeals[39] is an important case for two reasons: (1) it is authority for the exemption of college dormitories occupied by single undergraduate students; (2) Justice Taft's concurring opinion[40] foreshadowed the overruling of a line of cases which had denied exemption for the residences of theological seminaries.

The court in *Cleveland Bible College* was completely preoccupied with the problem of whether the school was open to the public generally and, if it was not, whether it would be entitled to exemption. In three earlier cases[41] exemptions for buildings housing theological schools and faculty and student residences were denied on the basis that since these schools trained prospective clergymen of particular faiths, they could not qualify for exemption under General Code section 5349 as public colleges or academies nor under section 5353 as property used exclusively for charitable purposes.

In granting exemption of a girls dormitory under General Code section 5353, the four man majority in the *Cleveland Bible College* case was divided on the ground for decision. Three of the justices, Justices Turner, Hart, and Stewart, believed that the evidence indicated that the

38. *Ibid.*

39. 151 Ohio St. 258, 85 N.E.2d 284 (1949).

40. *Id.* at 261, 85 N.E.2d at 285.

41. Society of the Precious Blood v. Board of Tax Appeals, 149 Ohio St. 62, 65, 77 N.E.2d 459, 460 (1948); American Comm. of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals, 148 Ohio St. 654, 656-57, 76 N.E.2d 719, 720-21 (1947); Bloch v. Board of Tax Appeals, 144 Ohio St. 414, 417-18, 59 N.E.2d 142, 147 (1945).

Bible college was open to the public generally and therefore entitled to exemption.[42] Justice Taft, on the other hand, thought that the evidence showed that the college was only open to Christians[43] but that this fact should be immaterial to the question of exemption. It is Justice Taft's statement that an institution need no longer be generally open to the public in order for its property to qualify for exemption, so long as that property is used exclusively for religious or educational purposes,[44] that became the law in *American Comm. of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals.*[45]

In the *American Comm. of Rabbinical College* case, Justice Taft's opinion in the *Cleveland Bible College* case became the majority view,[46] overruling the three earlier cases[47] that had denied exemption for the property of theological seminaries. The property exempted was a building used as a Jewish theological seminary and containing residences occupied only by students. The court did not discuss the problem of exempting residences but, since the exempt building contained residences of single theological seminary students, one could argue that the case is authority for exempting college-owned residences occupied by single graduate and professional students. A theological seminary is apparently the equivalent of a graduate or professional school, and the housing of seminary students would seem no more essential to the operation of the seminary than would the housing of graduate and professional students to the operation of their respective schools.

The most recent decision in which exemption of residences was sought by a school is *Denison Univ. v. Board of Tax Appeals.*[48] In that case, exemption was sought for university property occupied by nine fraternity houses. The fraternities owned the houses but leased the ground on which they were situated from the university. The court held that the use of property for the maintenance of a social fraternity house is not a use for charitable purposes.[49] It further pointed out that Ohio Revised Code section 5709.07 is expressly inapplicable "to leasehold estates or real property held under the authority of a college or university of learning in this state."[50] The court correctly observed that the denial of tax

42. Cleveland Bible College v. Board of Tax Appeals, 151 Ohio St. 258, 259, 85 N.E.2d 284, 290 (1949).
43. *Id.* at 262, 85 N.E.2d at 286 (concurring opinion).
44. *Id.* at 271, 85 N.E.2d at 290.
45. 156 Ohio St. 376, 102 N.E.2d 589 (1951).
46. See *id.* at 377, 102 N.E.2d at 590.
47. Cases cited note 41 *supra.*
48. 173 Ohio St. 429, 183 N.E.2d 773 (1962).
49. *Id.* at 439, 183 N.E.2d at 779.
50. *Id.* at 437, 183 N.E.2d at 778.

exemption for property used as fraternity houses is the majority rule throughout the United States.[51]

The results of the cases in this category, *i.e.,* faculty residences are generally nonexempt but student residences generally are exempt, seem justifiable in the light of Ohio's public burden motive for granting exemptions.[52] It can be said that private schools in providing their students with residences are relieving a burden which otherwise might fall upon the state. If there were no private schools, theoretically the state would have to provide additional schools. If the state provided such schools, it would undoubtedly provide residences, since it does so in the schools it presently supports. On the other hand, state-supported schools do not provide residences for their faculty, and thus it cannot be said that private schools which provide such residences are relieving any of the financial burden of the state.

Insofar as denial of exemption for faculty residences includes denial of exemption for school presidents' houses, the result does not seem justifiable, particularly since state-supported schools furnish their presidents with residences and most other jurisdictions apparently allow exemptions for the residences of private college presidents.[53] On the other hand, it is difficult, under the public burden theory, to justify granting exemptions for residences occupied by theological students, for clearly the state would never provide theological schools, let alone residences for their students.

Residences Owned by Hospitals

The decisions in this category are recent and few, and their results closely related to those in the cases involving school-owned residences. Similar to the result in the school cases, only residences occupied by student nurses — single, unpaid trainees — have been exempted. The test for exemption, the necessity of the residence to the operation of the institution, is the same as in the school cases, except that it is emphasized more strongly. In one case,[54] one sees that, as in the school cases, whether other hospitals provide residences for the particular personnel has a bearing on the determination of the necessity of such residences to the operation of the hospital.

The first case to consider the exemption of a residence owned by a

51. *Id.* at 443, 183 N.E.2d at 781. "With few exceptions the courts have held that college fraternities and sororities are not exempt from taxation, because they exist primarily for the convenience of their members, and are mainly concerned with providing them with board, lodging, and recreation, while any educational, charitable, and benevolent purposes are of secondary importance." Annot., 66 A.L.R.2d 904, 904-05 (1959).

52. See note 7 *supra.*

53. See Note, *Exemption of Educational, Philanthropic and Religious Institutions from State Real Property Taxes,* 64 HARV. L. REV. 288, 298 (1950).

54. Doctors Hosp. v. Board of Tax Appeals, 173 Ohio St. 283, 285, 181 N.E.2d 702, 704 (1962) (concurring opinion).

hospital was *Aultman Hosp. Ass'n v. Evatt.*[55] The court decided that a student nurses home, located two blocks from the exempt hospital, was exempt under General Code section 5353. The building was occupied only by student nurses, who did not pay rent. According to the hospital's witness, the building had been purchased because it was impossible to rent student nurses quarters in that part of the city. He testified that it was impossible to run the hospital without student nurses and that the hospital had to provide housing for them in order to have them. The evidence showed that seventy-five per cent of the nurses working in the hospital were student nurses. Given these facts, the court held that the student nurses home was "incidental to and *a necessary part of the hospital institution* itself"[56] and that the student nurses were engaged in work *"essential in carrying on the hospital work."*[57]

The *Aultman Hosp. Ass'n* case was distinguished and exemption denied in *Cleveland Branch of the Guild of St. Barnabas for Nurses v. Board of Tax Appeals*[58] and in *Doctors Hosp. v. Board of Tax Appeals.*[59] In the former case, exemption had been sought under General Code section 5353 for a building occupied as a residence by graduate and student nurses, a few retired nurses, and a few teachers and librarians. The court held that the property was used primarily to provide low-rent housing accommodations and thus was not being used exclusively for charitable purposes.[60] Then too, since the nurses worked in various hospitals not affiliated with the Guild of St. Barnabas for Nurses, whose stated purpose was improving the lot of nurses generally, the residence obviously was not essential or even incidental to the operation of a hospital. In reaching its conclusion, the court stressed the fact that all the nurses paid rent, indicating that the building was not being used to house charity occupants.[61]

In the *Doctors Hospital* case, exemption was denied for two residence

55. 140 Ohio St. 114, 42 N.E.2d 646 (1942).

56. *Id.* at 117, 42 N.E.2d at 647 (Emphasis added.)

57. *Ibid.* The exemption of student nurses residences was again approved in Good Samaritan Hosp. Ass'n v. Glander, 155 Ohio St. 507, 99 N.E.2d 473 (1951). In that case, the building exempted was adjacent to the hospital and was being remodeled to be used as a student nurses home.

The decision illustrates a second exception to the requirement for exemption of exclusive use of the property. See note 9 *supra* and accompanying text. To be exempt, the property need not be actually used for a charitable, educational, or religious purpose; it is sufficient if the property is not being used for a commercial purpose on tax lien day and substantial steps are being taken to prepare the property for an exempt use. *Accord,* Holy Trinity Protestant Episcopal Church v. Bowers, 172 Ohio St. 103, 107, 173 N.E.2d 682, 684 (1961); *In re* Application for Exemption, 165 Ohio St. 180, 182, 134 N.E.2d 152, 154 (1956).

58. 150 Ohio St. 484, 83 N.E.2d 229 (1948).

59. 173 Ohio St. 283, 181 N.E.2d 702 (1962).

60. Cleveland Branch of the Guild of St. Barnabas for Nurses v. Board of Tax Appeals, 150 Ohio St. 484, 486-87, 83 N.E.2d 229, 230 (1948).

61. *Id.* at 487, 83 N.E.2d at 231.

buildings, one of which was contiguous to the exempt hospital and used to house, rent-free, fourteen married interns and their families. The other was located a short distance from the hospital and was occupied rent-free by three residents in training, one of whom was married and had a family. In a per curiam opinion, the court stated that the holding in the *Western Reserve Academy* case, that residence in a dwelling with a family was a private use of the premises and not a use exclusively for charitable purposes, was controlling.[62]

The court also mentioned that the case did not require it to decide whether similar quarters furnished to unmarried interns and residents were exempt.[63] But on the basis of the distinction between the *Aultman Hosp. Ass'n* case and the *Doctors Hospital* case made by Justice Bell in his concurring opinion,[64] such residences would apparently not be exempt. Justice Bell pointed out that the student nurses in *Aultman Hosp. Ass'n* paid a fee for their training while the interns and residents in *Doctors Hospital* were paid by the hospital[65] and thus were employees as well as trainees. He also pointed out that the evidence indicated that a hospital can operate without an intern-resident program (One hospital in the city did not have such a program.) but that the contrary was true in the case of the student nurses program in *Aultman Hosp. Ass'n.*[66]

Residences Owned by Religious Institutions

Except in one factual situation, parsonages and other residences occupied by the personnel of religious institutions have been held nonexempt in Ohio. This exceptional fact situation was present in two decisions, both of which granted exemption for a residence of a church caretaker and his family, where that residence occupied only a small portion of the church property and the church had contended that the caretaker's residential presence was necessary for the maintenance of the church property.[67]

62. Doctors Hosp. v. Board of Tax Appeals, 173 Ohio St. 283, 285, 181 N.E.2d 702, 704 (1962).

63. *Id.* at 284-85, 181 N.E.2d at 703-04.

64. *Id.* at 287, 288, 181 N.E.2d at 705.

65. *Ibid.*

66. *Ibid.*

67. *In re* Bond Hill-Roselawn Hebrew School, 151 Ohio St. 70, 84 N.E.2d 270 (1949); St. Paul's Evangelical Lutheran Church v. Board of Tax Appeals, 114 Ohio App. 330, 182 N.E.2d 330 (1955).

In Davis v. Cincinnati Camp Meeting Ass'n, 57 Ohio St. 257, 49 N.E. 401 (1897), exemption was granted for the camp grounds of the applicant, an affiliate of the Methodist Episcopal Church. On the grounds and included in the exemption was a cottage occupied by the camp sexton. The controlling statute contained the words "buildings belonging to institutions of purely public charity" instead of "used exclusively for charitable purposes," found in OHIO REV. CODE § 5709.12. The court paid little attention to the fact that there was a residence involved in the case and in a per curiam decision simply ruled that the applicant was an institu-

Two early cases, *Gerke v. Purcell*[68] and *Watterson v. Halliday*,[69] established the precedent that parsonages, even when attached to the church building, are not exempt under Ohio Revised Code section 5709.07, which provides for exemption of "houses used exclusively for public worship." In *Incorporated Trustees of the Gospel Worker Soc'y v. Evatt*[70] and in *Mussio v. Glander*,[71] the court extended the holdings in the *Gerke* and *Watterson* cases to buildings containing residences occupied by religious personnel other than priests. The two cases also had the effect of extending the *Gerke* and *Watterson* holdings to situations in which exemption was sought under Ohio Revised Code section 5709.12, which requires that the property be "used exclusively for charitable purposes."

In *In re Bond Hill-Roselawn Hebrew School*[72] exemption was granted pursuant to General Code section 5349 for a one and one-half story building, the first floor of which was used exclusively for public worship and the second floor as a residence for the caretaker and his family. The supreme court, speaking through Justice Taft, refused to construe literally the statutory words, "houses used exclusively for public worship," and thus deny exemption. In distinguishing the *Bond Hill-Roselawn* fact situation from that in the earlier parsonage cases, Justice Taft stated that

> with regard to a parish house or parsonage, it is clear that the primary use of the premises is for residence and any use for pubic worship is merely incidental. In the instant case, the primary use of the building is for public worship.[73]

---

tion of purely public charity and that therefore all lands occupied by it were exempt. The decision is doubtful authority today, except perhaps in an identical factual situation, because the court did not consider whether the residences involved were "used exclusively for charitable purposes," the requirement for exemption under OHIO REV. CODE § 5709.12.

68. 25 Ohio St. 229 (1874).

69. 77 Ohio St. 150, 82 N.E. 962 (1907).

70. 140 Ohio St. 185, 42 N.E.2d 900 (1942). Exemption was denied for a building containing, among other things, a chapel used for public worship, space used for housing equipment to print religious literature, and rooms occupied as residences by the printers. In regard to the rooms used as residences, the court said only that the *Gerke* and *Watterson* cases were controlling. *Id.* at 189, 42 N.E.2d at 902.

71. 149 Ohio St. 423, 79 N.E.2d 233 (1948). The court denied exemption for a building, the first floor of which was used as a chapel, the second floor used to house offices and priests' residences, and the third floor used to house six nuns, some of whom were engaged in repairing clothes donated for the poor and others in outside activities, ministering to the sick and poor. In a per curiam opinion it was held that the building was not used exclusively for public worship nor did it belong to an institution used exclusively for a charitable purpose. It was also stated that the taxing authorities were not authorized to split the listing of a separate parcel of property owned by a single charitable institution so that one part would be exempt (here the floor used as a chapel) and another taxable. *Id.* at 425, 79 N.E.2d at 234. Ohio Gen. Code § 5560 (OHIO REV. CODE § 5713.04 (Supp. 1962)) was amended in 1949 to allow for such a split listing.

72. 151 Ohio St. 70, 84 N.E.2d 270 (1949).

73. *In re* Bond Hill-Roselawn Hebrew School, 151 Ohio St. 70, 77, 84 N.E.2d 270, 274 (1949).

As Justice Taft's words indicate, in this particular fact situation, the test apparently is no longer "used exclusively for public worship" but rather "used primarily for public worship." It must also be pointed out that, at the time *In re Bond Hill-Roselawn Hebrew School* was decided, General Code section 5560[74] had not yet been amended to allow for split-listing. Thus, at that time, the property was either all exempt or all taxable.

Four years later, in *Trustees of the Church of God v. Board of Tax Appeals*[75] the supreme court, in a fact situation similar, yet distinguishable, from that in *Bond Hill-Roselawn Hebrew School,* split the listing of a church-owned building, exempting the part used for public worship but denying exemption for the second floor which was divided into apartments for the janitor, minister, and their respective families. The principal fact distinguishing this case from *Bond Hill-Roselawn Hebrew School* is that over fifty per cent of the building was being used for non-exempt purposes[76] and, therefore, one could not say that its primary use was for public worship. Furthermore, unlike the situation in *Bond Hill-Roselawn Hebrew School,* the church did not introduce evidence showing that it was necessary for the pastor and the janitor to reside in the building.[77]

What effect did the 1949 amendment of General Code section 5560 and the decision in *Trustees of the Church of God v. Board of Tax Appeals* have on the *Bond Hill-Roselawn Hebrew School* case? One could logically argue that, in the light of the amended statute and the *Church of God* decision, if a court were again faced with the *Bond Hill-Roselawn* fact situation, it would split the listing of the building, exempting only that portion used for public worship. That is what the Attorney General and the Board of Tax Appeals argued in *St. Paul's Evangelical Lutheran Church v. Board of Tax Appeals.*[78] But the Lucas County Court of Appeals thought otherwise.

In *St. Paul's Evangelical Lutheran Church v. Board of Tax Appeals,* decided in 1955 but not reported until 1962, the court of appeals reversed the holding of the Board of Tax Appeals, which had denied exemption of a custodian's apartment. This fourth floor apartment constituted 2.3% of the floor space of a large "parish house" which adjoined the church. The other 97.7% of the "parish house," which was found exempt by the Board of Tax Appeals, contained the offices of the three pastors and the secretarial staff, a chapel, Sunday school, and recrea-

74. OHIO REV. CODE § 5713.04 (Supp. 1962). See also notes 18 & 19 *supra* and accompanying text.

75. 159 Ohio St. 517, 112 N.E.2d 633 (1953).

76. *Ibid.*

77. *Ibid.*

78. 114 Ohio App. 330, 334, 182 N.E.2d 330, 332 (1955).

tional facilities. The church contended that the extensive church facilities required the custodian to be present night and day for the protection of the property and for service to the church membership.

Thus the court was presented with a fact situation almost squarely in point with that in *In re Bond Hill-Roselawn Hebrew School*: the residence occupied by the caretaker and his wife constituted only a small portion of the otherwise exempt building, and the maintenance of that residence was allegedly necessary to the exempt use of the property. But, before the court could follow the *Bond Hill-Roselawn* precedent, it had to dispose of the contention that the listing of the property should be split pursuant to Ohio Revised Code section 5713.04. It did so by construing section 5713.04 to apply only when a substantial part of the property was devoted to nonexempt purposes and not when the property was used primarily for an exempt purpose.[79]

This construction of section 5713.04 and the construction of section 5709.07 — the residence was held exempt as "incidental to and necessary as a part of the building being maintained for the purposes of public worship" — find support in *In re Bond Hill-Roselawn Hebrew School, Goldman v. Friars Club, Inc.*,[80] and *Goldman v. L. B. Harrison*,[81] the latter two cases involving Y.M.C.A.-type organizations. But these constructions are not supported by a strict reading of the two statutes and, if the policy of strictly construing exempion statutes is to be given more than lip service adherence, the constructions are incorrect, and the listing of the property involved in a case like *St. Paul's Evangelical Lutheran Church* should be split.

Residences Owned by Public and Private Housing Foundations

There are three relatively recent decisions involving unsuccessful attempts to procure exemptions for low-rent housing projects under General Code section 5353.[82] In each of the decisions, the court emphasized a basic rule in regard to the exemption of residences: Furnishing low-rent residences is not in itself a charitable use of the property. Either the residence must be necessary to the performance of a charitable func-

79. *Ibid.*

80. 158 Ohio St. 185, 107 N.E.2d 518 (1952). See at 565-66 *infra.*

81. 158 Ohio St. 181, 107 N.E.2d 530 (1952).

82. In two of the decisions, Youngstown Metropolitan Housing Authority v. Evatt, 143 Ohio State 268, 55 N.E.2d 122 (1944), and *In re* Application of the United States Housing Authority, 11 Ohio Supp. 9 (B.T.A. 1943), exemption was also sought and denied under General Code § 5351 (now OHIO REV. CODE § 5709.08), which provides for exemption of real or personal property owned by Ohio or the United States and of public property used for a public purpose.

tion, such as maintaining a hospital or a school, or providing the residence must be a charitable service to occupants who are proper objects of such charity, for example, indigent persons, the ill, or orphans. In one of the cases,[83] an additional requirement was given: Some of the occupants must be people who cannot pay for their accommodations.

In *In re Application of the United States Housing Authority*[84] exemption was denied for metropolitan housing projects built on United States government property. In *Youngstown Metropolitan Housing Authority v. Evatt*[85] similar projects had been financed to a large extent by federal government loans. The denial of exemption in both decisions was based to a large extent on the fact that all the occupants had to be able to pay rent to live in the projects.[86] If they could not pay, they were evicted, and, if their income increased, their rent was raised. Given this situation, neither the supreme court nor the Board of Tax Appeals could see that the two housing authorities were being charitable in providing residences or that the occupants of the projects were the objects of charity.[87]

In *Beerman Foundation, Inc. v. Board of Tax Appeals*[88] a private foundation sought exemption for property used to provide low-rent housing for disabled World War II veterans and their families. The fact that all the occupants paid rent seems to be the principal reason for the denial of exemption.[89]

Justice Taft, in his dissenting opinion, criticized the validity of this reason for denying exemption. He stated that it was immaterial that all the occupants paid rent, as long as no profit was acquired by the owning institution.[90] In his opinion, providing low-rent housing for disabled veterans is a charitable purpose worthy of exemption.[91]

---

83. Beerman Foundation, Inc. v. Board of Tax Appeals, 152 Ohio St. 179, 87 N.E.2d 474 (1949).

84. 11 Ohio Supp. 9 (B.T.A. 1943).

85. 143 Ohio St. 268, 55 N.E.2d 122 (1944).

86. See *id.* at 279, 55 N.E.2d at 127; *In re* Application of the United States Housing Authority, 11 Ohio Supp. 9, 12 (B.T.A. 1943).

87. Also, in *Youngstown Metropolitan Housing Authority,* the applicant's rental income exceeded its maintenance costs and was used to retire its bonds. This situation furnished the court with another reason for holding that the property was being used to acquire profit and not exclusively for charitable purposes. See Youngstown Metropolitan Housing Authority v. Evatt, 143 Ohio St. 268, 281, 55 N.E.2d 122, 128 (1944).

88. 152 Ohio St. 179, 87 N.E.2d 474 (1949).

89. "[H]ousing for the needy, aged, sick, orphans or widows is charity entitling the property so used to be exempted from taxation. However, we are of opinion that such housing would not be used exclusively for charitable purposes if each and every occupant was required to pay for accommodations." *Id.* at 182, 87 N.E.2d at 476. See cases cited note 15 *supra.*

90. *Id.* at 183, 87 N.E.2d at 476 (dissenting opinion).

91. *Id.* at 184, 87 N.E.2d at 477.

Residences Owned by Y.M.C.A.-Type Institutions

The two decisions in this category, *Goldman v. L. B. Harrison*[92] and *Goldman v. Friars Club, Inc.*,[93] are companion cases decided in 1952. Both involved similar factual situations. Both were taxpayer suits in which buildings containing low-rent dormitories, cafeterias, and recreational facilities were sought to be placed on the tax duplicate. Nevertheless the court granted exemption under General Code section 5353 in the *Friars Club, Inc.* case[94] and denied it in the *L. B. Harrison* case.[95]

The crucial factual distinction, indeed the only observable distinction between the two cases, is apparently that the seven organizations, including the Y.M.C.A. and the Y.W.C.A., involved in *Friars Club, Inc.* carried on programs of a charitable nature, to which the residences and other facilities provided in their buildings were only incidental. On the other hand, in *L. B. Harrison,* the organization owning the building apparently did not provide such a program.[96]

But it is the criterion for exemption laid down in *Friars Club, Inc.* which makes that case significant and which, when applied to the factual distinction mentioned above, resulted in exemption in one case and nonexemption in the other. The court stated that criterion as follows:

> The board [Board of Tax Appeals] apparently did not give consideration to the character of these uses [dormitories, public cafeterias, and the like] *as connected with and incidental to the overall programs carried on within the properties and the charitable nature of each institution as a whole.*[97] (Emphasis added.)

Some legal authorities feared that, by the above statement, the court had replaced the basic test of exclusive use for charitable purposes with this new rather vague criterion.[98] But this fear has not been realized in subsequent cases, which have continued to apply the old test.[99] Perhaps a better view of the above statement is that it represents, as did the holdings in *Aultman Hosp. Ass'n v. Evatt*[100] and *In re Bond Hill-Roselawn Hebrew School,*[101] a recognition by the Ohio Supreme Court that main-

92. 158 Ohio St. 181, 107 N.E.2d 530 (1952).

93. 158 Ohio St. 185, 107 N.E.2d 518 (1952).

94. *Id.* at 202, 107 N.E.2d at 525. The result in the *Friars Club* case is in accord with the national trend to exempt such facilities. See Annot., 72 A.L.R.2d 521, 534 (1960).

95. Goldman v. L. B. Harrison, 158 Ohio St. 181, 184, 107 N.E.2d 530, 532 (1952).

96. See *ibid.*

97. Goldman v. Friars Club, Inc., 158 Ohio St. 185, 199, 107 N.E.2d 518, 524 (1952).

98. See *id.* at 203, 107 N.E.2d 526 (dissenting opinion); Fisher, *Charities and the Ohio Tax Laws,* 18 OHIO ST. L.J. 228, 236 (1957).

99. See Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 429, 439, 183 N.E.2d 773, 779 (1962); Doctors Hosp. v. Board of Tax Appeals, 173 Ohio St. 283, 285, 181 N.E.2d 702, 704 (1962); National Headquarters Disabled Am. Veterans v. Bowers, 171 Ohio St. 312, 314, 170 N.E.2d 731-33 (1960).

100. 140 Ohio St. 114, 42 N.E.2d 646 (1942). See text accompanying notes 55-57 *supra.*

101. 151 Ohio St. 70, 84 N.E.2d 270 (1949). See text accompanying notes 72 & 77 *supra.*

taining a residence which is necessary for the performance of the institution's exempt activities may be an exclusively charitable use or a use exclusively for public worship.

The court in the *Friars Club* case in granting exemption went further than it had in the *Aultman* case. In *Aultman* the exempt nurses home was found to be "incidental," "necessary," and "essential"[102] to the operation of the hospital. In *Friars Club, Inc.* the exempt residence was only required to be "connected with and incidental to the overall programs carried on within the properties."[103] To disagree with the court's holding in the *Friars Club* case is to simply disagree with the court's judgment as to where to draw the line in granting exemptions. But in view of Ohio's policy of strictly construing exemption statutes against the one claiming exemption,[104] one can well sympathize with those who would argue that the court should have split the listing of the various buildings in the *Friars Club* case, denying exemption for those parts of the buildings used as residences, cafeterias, and the like.

CONCLUSION

In attempting to identify the criteria applied by the courts in determining what is an exclusively charitable use or an exclusive use for public worship, the author has grouped the cases involving residences into five categories. This classification would seem to be valid since the criteria for exemption have differed somewhat depending upon the fact situation involved. The classification also has provided a convenient means of studying the cases in detail. Although this method of organization has proved advantageous, it is also somewhat arbitrary and has had the disadvantage of handicapping the study of the interrelation of all the residence cases decided under Ohio Revised Code sections 5709.07 and 5709.12. These interrelationships must not be ignored by counsel faced with the problem of exemption of residences under the foregoing statutes.

One purpose of this study has been to attempt to uncover the criteria adopted by the courts in determining whether to exempt residences. The following criteria have been found in the cases studied: The use of the property is the test of exemption under Ohio Revised Code sections 5709.07 and 5709.12. Under 5709.07 the building sought to be exempted must be "used exclusively for public worship." Under 5709.12 it must be "used exclusively for charitable purposes."

In determining what is an exclusively charitable use, the courts have inquired as to whether the residences' occupants were "objects of

102. Aultman Hosp. Ass'n v. Evatt, 140 Ohio St. 114, 117, 42 N.E.2d 646, 647 (1942).

103. Goldman v. Friars Club, Inc., 158 Ohio St. 185, 199, 107 N.E.2d 518, 524 (1952).

104. Crown Hill Cemetery Ass'n v. Evatt, 143 Ohio St. 399, 403, 55 N.E.2d 660, 662 (1944).