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**EXTENT OF EXEMPTION FROM TAXATION OF CHARITABLE
INSTITUTIONS UNDER THE KENTUCKY CONSTITUTION
SECTION 170**

Since the adoption of the present Kentucky Constitution in 1891, there has been a great deal of litigation in regard to the interpretation of the exemptions granted in section 170, and it is the purpose of this paper to examine those decisions which relate to the exemptions granted charitable institutions, and to determine the extent to which they are exempt from taxation by this section.

The pertinent phrases of section 170 are as follows:

“There shall be exempt from taxation . . . institutions of purely public charity . . . and all laws exempting or commuting property from taxation other than the property above mentioned shall be void.”

In *Lexington Cemetery Co. v. Unemployment Compensation Commission*¹ it was said: “The familiar rule is that an exemption from taxation comes only through the graces of the sovereign, therefore it is given a strict interpretation, and any doubt as to the extent of the exemption must be resolved against the taxpayer and in favor of the State.” Charitable institutions are granted tax exemption for the reason that they render a service to the State and relieve it of a burden which it would otherwise be the duty of the State and its people to assume.² A charitable institution whose services are not dispensed within the Commonwealth of Kentucky cannot be granted an exemption from taxation under the Kentucky Constitution, even though it may be located in this State, or incorporated here, or own property in Kentucky.³ As the charity renders no service within the State, it can relieve the State of no burden which it would otherwise be the duty of the State to assume. Thus there is no reason to grant an exemption from taxation to such an institution. From the reasoning followed by the Court in these cases involving out-of-state charities, it would seem that a charitable institution incorporated outside the State or even located elsewhere would be granted an exemption from taxation on property which it owned in Kentucky if it rendered any charitable services in this State.

Let us examine the cases to determine what is considered to be a charity within the meaning of section 170 of the Kentucky Constitution. Clearly those organizations are not included within the term “purely public charity” which are provided for specifically and

¹ 297 Ky. 851, 857, 181 S. W. 2d 699, 703 (1944).

² *Lloyd Library and Museum v. Chipman*, 232 Ky. 191, 22 S. W. 2d 597 (1929).

³ *Layman Foundation v. City of Louisville*, 232 Ky. 259, 22 S. W. 2d 622 (1929); *Lloyd Library and Museum v. Chipman*, 232 Ky. 191, 22 S. W. 2d 597 (1929).

separately in other clauses of Section 170.⁴ This would include churches, cemeteries, public property, educational institutions, and public libraries. The Court has consistently refused to include any organization or activity within the term "purely public charity" if it could possibly come within any of these other terms.⁵ Among the things which the Court has decided are charities within the meaning of section 170 are the Young Men's Christian Association,⁶ a theological seminary maintained by one religious denomination but open to students of all denominations,⁷ an orphan's home,⁸ and a preacher's aid society for the benefit of super-annuated ministers of a certain denomination.⁹ A hospital organized primarily for the purpose of doing charitable work is an institution of purely public charity,¹⁰ but when such charitable work is only incidental to the real purpose of the hospital, such hospital cannot be exempt from taxation as a

⁴ "There shall be exempt from taxation public property used for public purposes; places actually used for religious worship, with the grounds attached thereto and used and appurtenant to the house of worship, not exceeding one-half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education; public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one-half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto; household goods and other personal property of a person with a family, not exceeding two hundred and fifty dollars in value; crops grown in the year in which the assessment is made, and in the hands of the producer; and all laws exempting or commuting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

⁵ *Lexington Cemetery Co. v. Unemployment Compensation Commission*, 297 Ky. 851, 181 S. W. 2d 699 (1944); *Commonwealth v. Thomas*, 119 Ky. 208, 83 S. W. 572 (1904) (a trust fund for the propagation of a religious sect); *Commonwealth v. Lexington Cemetery Co.*, 114 Ky. 165, 70 S. W. 280 (1902).

⁶ *Commonwealth v. Young Men's Christian Association*, 116 Ky. 711, 76 S. W. 522 (1903).

⁷ *City of Louisville v. Southern Baptist Theological Seminary*, 100 Ky. 506, 36 S. W. 955 (1896).

⁸ *Kentucky Female Orphan School v. City of Louisville*, 100 Ky. 470, 36 S. W. 921 (1896).

⁹ *Preacher's Aid Society of Kentucky Annual Conference of Methodist Episcopal Church, South v. Jacobs*, 235 Ky. 790, 32 S. W. 2d 343 (1930).

¹⁰ *Mason County v. Hayswood Hospital of Maysville*, 167 Ky. 17, 179 S. W. 1050 (1915); *City of Dayton v. Trustees of Speers Hospital*, 165 Ky. 56, 176 S. W. 361 (1915).

charity.¹¹ It is interesting to note that a trust fund, so long as it is held in trust for a charitable purpose is exempt from taxation.¹² This exemption applies even while the fund is held for a number of years, pending litigation or to settle the estate, so long as the amount is certain and the equitable owner, the charity, is determined with certainty.¹³

Generally it has been held that benevolent associations, such as the Odd Fellows, the Elks or the Masons are not institutions of purely public charity, but rather are private charities.¹⁴ The primary purpose of such organizations is social and not charitable, and such donations as they may make to help the indigent are only incidental;¹⁵ the benefits paid to sick or indigent members are paid as a matter of right and not as charity.¹⁶ However, when a benevolent association maintains a home for widows or orphans, such institutions are exempt from taxation as institutions of purely public charity, even though the recipients of such charitable benefits are restricted to the children or widows of members of the lodge.¹⁷ The Court does not consider that this factor alone causes the institution to lose its public character, because there must be some means of determining who shall be the recipients of any charity, and one classification is about as logical as another. The main point is that the State is relieved of the duty it would otherwise have to assume in regard to those indigent persons cared for by the lodge. In one case the Court said that the word "purely" was meant to describe the quality of the charity, rather than the means by which it is administered.¹⁸

Having determined what is a charity within the meaning of section 170, let us now examine the cases which have interpreted the word "institution" within the meaning of this section. In *Kentucky Female Orphan School v. City of Louisville*,¹⁹ the first case arising

¹¹ *Gray Street Infirmary v. City of Louisville*, 23 Ky. L. Rep. 1274, 65 S. W. 11 (1901).

¹² *Commonwealth v. Parr's Executor*, 167 Ky. 46, 179 S. W. 1048 (1915); *Commonwealth v. Pollitt*, 76 S. W. 412 (Ky. 1903).

¹³ *Norton's Exrs. v. City of Louisville*, 118 Ky. 836, 82 S. W. 621 (1904). See *Moorman's Exr. v. Board of Supervisors, Jefferson County*, 192 Ky. 242, 232 S. W. 379 (1921).

¹⁴ *Benevolent Association of Elks v. Wintersmith*, 204 Ky. 20, 263 S. W. 670 (1924); *Merrick Lodge No. 31, I. O. O. F. v. City of Lexington*, 175 Ky. 275, 194 S. W. 92 (1917); *Vogt v. City of Louisville*, 173 Ky. 119, 190 S. W. 695 (1917); *City of Newport v. Masonic Temple Association*, 108 Ky. 333, 56 S. W. 405 (1900).

¹⁵ *City of Newport v. Masonic Temple Assn.*, 108 Ky. 333, 56 S. W. 405 (1900).

¹⁶ *Merrick Lodge No. 31, I. O. O. F. v. City of Lexington*, 175 Ky. 275, 194 S. W. 92 (1917).

¹⁷ *Trustees of Widows' and Orphans' Fund of Beattyville Lodge No. 304 I. O. O. F. v. Blount*, 222 Ky. 717, 2 S. W. 2d 394 (1928); *Widows' and Orphans' Home of O. F. v. Commonwealth*, 126 Ky. 386, 103 S. W. 354 (1907).

¹⁸ *Widows' and Orphans' Home of O. F. v. Commonwealth*, 126 Ky. 386, 103 S. W. 354 (1907).

¹⁹ 100 Ky. 470, 36 S. W. 921 (1896).

under section 170 of the Constitution of 1891, the Court gave a definition to the word "institution" which has been followed in all of the later cases in regard to charities. In that case the city of Louisville claimed the right to tax property located in Louisville which was owned by an orphan school located in Midway, on the ground that section 170 granted tax exemption only to the school buildings and grounds, and not to other property which it might own elsewhere and which was not used to house the work of the charity itself. The Court decided that the orphan's school was a purely public charity, and that its activities as well as its property were exempt from taxation. In *Corbin Y.M.C.A. v. Commonwealth*²⁰ the Court went on to say:

"It will . . . be noticed that the very language employed [in Section 170] exempts 'property' used for public purposes, religious worship or for cemeteries; but that it exempts not the property but the institutions themselves which are engaged purely in public charity or education . . ."

Following this reasoning, a restaurant operated in connection with a Y.M.C.A.,²¹ property owned by a public charity and leased to others for business purposes,²² and funds invested and the income used in carrying on the work of the charity,²³ all have been held to be exempt from taxation.

The meaning which the Court has placed on the word "institution" seems to be broad enough to include exemption from all kinds of taxes. However, there are two instances in which the Court has refused to exempt institutions of purely public charity. In the first of these instances, the Court refused to exempt a charitable institution from the payment of an assessment for street improvements made along property owned by the charity.²⁴ The Court said that it is a well settled principle that the sections of the Constitution relating to taxation do not apply to assessments.²⁵ In the second instance, the motor vehicle registration tax, a regulatory and not primarily a revenue measure, was held to be not included in the exemption from taxation granted to charities under section 170.²⁶ In each of these two exceptional instances the levy in question was not a tax in the strict sense of the word, so it may be said that these are not ex-

²⁰ 181 Ky. 384, 386, 205 S. W. 388, 388 (1918).

²¹ *Id.*

²² *City of Louisville v. Presbyterian Orphan Home Soc. of Louisville*, 299 Ky. 566, 186 S. W. 2d 194 (1945); *Trustees of Widows' and Orphans' Fund of Beattyville Lodge No. 304, I. O. O. F. v. Blount*, 222 Ky. 717, 2 S. W. 2d 394 (1928); *City of Louisville v. Y. M. C. A.*, 166 Ky. 104, 178 S. W. 1168 (1915); *Commonwealth v. Young Men's Christian Association*, 116 Ky. 711, 76 S. W. 522 (1903).

²³ *Widows' and Orphans' Home of O. F. v. Commonwealth*, 126 Ky. 386, 103 S. W. 354 (1907).

²⁴ *Hager, Auditor v. Gast*, 119 Ky. 502, 84 S. W. 556 (1905).

²⁵ *Id.* at 506.

²⁶ *Gray v. Methodist Episcopal Church, South, Widows and Orphans Home in State of Kentucky*, 272 Ky. 646, 114 S. W. 2d 1141 (1938).

ceptions to the rule of complete exemption from taxation, but rather limitations on the meaning of the word "taxation." In all other instances the property of the charity, however used, and its activities which are consistent with its purpose and objects have been completely exempt from state and local taxation.

In many of the cases involving taxation of income-producing property owned by institutions of purely public charity, there have been very vehement dissenting opinions. The arguments made there express the fear that in time charities will come to own so much property, especially in the business sections of the cities, that to continue to exempt such property from taxation would be a tremendous burden on the State, and especially on the cities. It may be said that it will be a distinct evil to continue to grant exemption from taxation for such property, if in the course of time this state of affairs does come to pass. But it seems rather absurd to think that charities now own such property to the extent that such ownership is a menace to society. If it should become a menace and should ever reach such proportions as to overbalance the service rendered to the State by such institutions of purely public charity, then the remedy would be in an amendment to the Constitution of Kentucky.

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