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# Taxation--Can College Fraternity Property Be Exempt in Kentucky?--Contra View

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pose of a college fraternity is to promote educational, moral and social culture, and that a fraternity is not run for pecuniary profit.

The Illinois Supreme Court, in *People v. Omega Chapter of Psi Upsilon Fraternity, supra*, held that college fraternities were exempt from taxation under Illinois Statutes, Ch. 120, Sec. 2, which exempted from taxation "all property used exclusively for school . . . purposes . . . and not used with a view of profit." This case, whose decision was based on a statute which is almost identical with Section 170 of the Kentucky Constitution, represents the better modern attitude toward college fraternities as educational institutions, as evidenced by the fact that, although the court made no mention of the case of *Knox College v. Board of Review of Knox County, supra*, yet, as it is of a later date, it must be given precedence over the Knox College case.

From the foregoing, this writer is of the opinion that the Kentucky Court of Appeals, in the event the question of whether college fraternities are exempt from taxation under Section 170 of the Kentucky Constitution comes before them for adjudication, should hold that they are exempt.

WILLIAM MELLOR.

TAXATION—CAN COLLEGE FRATERNITY PROPERTY BE EXEMPT IN KENTUCKY?—CONTRA VIEW.—Section 170 of the Kentucky Constitution dealing with exemptions from taxation, exempts "institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation, and the income from which is devoted solely to the cause of education."

Does college fraternity property come within the exemption? Is a fraternity house an institution of purely public charity, or an institution of education within the meaning of Section 170?

While there are no cases bearing directly on the subject in Kentucky, a study of the constitutional provision and similar constitutional provisions in other states where cases have arisen, leads one to believe that college fraternity property does not come within the exemption, and that a statute exempting such property from taxation would be invalid.

A leading case, *People v. Alpha Phi of Phi Kappa Sigma Educational Association of University of Chicago*, 326 Ill. 573, 158 N. E. 213 (1927), holds that a fraternity is not a public charity, although it may be the means of helping some members through school. Only members of the fraternity are benefitted thereby, and they are chosen under rules of the societies themselves and not by virtue of attendance at the school. To constitute a public charity, the benefit must not be conferred on definite persons, or defined individuals, but must be conferred on indefinite persons composing the public, or some part of the public; but the indefinite clause may be one sex, or the inhabitants of a particular city or town, or members of particular religious or secular organiza-

tions. The primary purpose of a college fraternity is not charity, and even though one or two members of the particular fraternity are aided financially, it is not in any sense a public charity.

Kentucky, until 1907, did not even go so far as Illinois is defining a public charity. In that year the widows and orphans of Odd Fellows were defined as a part of the public so as to make the home provided for them a public charity—*Widows and Orphans Home of Odd Fellows v. Commonwealth*, 126 Ky. 386, 103 S. W. 354 (1907). Kentucky, however, in order to hold an organization of a public charitable nature, stresses that its primary purpose be charitable and not fraternal or social. A certain lodge of Knights Templars was not a purely public charity—*Vogt v. City of Louisville*, 173 Ky. 119, 190 S. W. 695 (1917). The Benevolent Association of Elks is not an institution of purely public charity. *Benevolent Association of Elks v. Wintersmith*, 204 Ky. 20, 263 S. W. 670 (1924). By analogy, it seems clear that a college social fraternity would not be a public charitable organization.

Is a college fraternity an educational institution? Kentucky has no cases in point. Perhaps the most nearly analogous case is the Berea College Case, 149 Ky. 95, 157 S. W. 929 (1912), in which exemption was allowed for a laundry, printing department, waterworks system, supply store, and other properties operated in connection with Berea College. Berea, however, trains all its pupils in manual labor and uses the proceeds for maintenance of the school. The laundry, printing department, etc., were part of the educational equipment. A college fraternity house plays no part in the actual education of the student. It teaches him nothing that the school requires him to know. True, it may provide training in social deportment, but this is not a part of the school curriculum. The fraternity is a social organization largely and benefits its members in that way. *Oregon Kappa Gamma Rho v. Marion County*, 130 Ore. 165, 279 P. 55 (1929). Dictum in a Kentucky case says that the theory of exemption of educational and charitable institutions is that the institutions are performing a service which the state itself is obligated to discharge. If no service is performed toward the public, no exemption is allowed, even though in a broad sense the institution may be said to be educational or charitable. *Layman's Foundation v. City of Louisville*, 232 Ky. 259, 22 S. W. (2d) 622 (1929).

It may be urged that fraternity houses are recreational centers and are a necessary adjunct to the school, such as an athletic field or swimming pool might be considered. A lake used exclusively for recreational purposes was held exempt as a necessary part of school. See *People v. Catholic Bishop of Chicago*, 311 Ill. 11, 142 N. E. 520 (1924). The lake, however, was open to all students and was under control and direction of the school. It was owned and operated by the school. A college fraternity, while it is subject to a few disciplinary regulations by the school, is decidedly not a working part of it. A fra-

ternity house cannot be exempt as a school dormitory, when it is open only to the members of that particular fraternity who are chosen not by virtue of college attendance, but by rules established by the societies themselves. *Knox College v. Board of Review of Knox County*, 308 Ill. 160, 139 N. E. 824 (1923), refused exemption, reasoning that housing or boarding of students is not in itself an educational process any more than is the housing or boarding of any other human beings. For further discussion of this case and allied cases on the same point, see note by Harlan Hobert Grooms, 14 Ky. Law Journal 338.

There are a few states allowing exemption to fraternity property, but an examination of leading cases shows that a constitutional provision is lacking, or is somewhat different from ours.

*State v. Allen*, 189 Ind. 369, 127 N. E. 145 (1920), is the strongest case for the other side. It exempted fraternity houses under a statute specifically exempting Greek letter societies' property when occupied and used exclusively for the purposes of the societies. This statute was declared not to be in conflict with the constitution of Indiana, which provided that only such property should be exempt as used for municipal, educational, literary, scientific, religious, or charitable purposes as may be especially exempted by law. This appears to allow the legislature somewhat more leeway than our constitutional provision, but it is clearly liberally construed in Indiana.

*Kappa Kappa Gamma House Association v. Percy*, 92 Kan. 1020, 142 P. 294 (1914), was decided under a similar statute exempting buildings of college and university societies used as literary halls or dormitories. The validity of the statute was not questioned. *Beta Theta Pi v. Board of Commissioners*, 108 Okl. 78, 324 P. 254 (1925), granted exemption under a constitutional provision which enumerated exemptions for certain property, and specifically provided that all other property exempt during the time that Oklahoma was a territory was to remain exempt unless a statute was passed to the contrary. No statute was passed regarding fraternity property, hence, it was exempt.

The general rule is that tax exemption statutes are strictly construed. (See 2 Cooley Taxation, Fourth Edition, Sec. 672, for a discussion of state and federal cases.) If the problem were to be determined solely by a literal or linguistic interpretation of the word, "charitable" or "educational," it is admitted that the court might readily find either way. Indeed, a few states have held that cases involving charitable, religious, or educational institutions are exceptions to the strict construction rule. *Indianapolis v. Grand Master, Etc. of Grand Lodge of Indiana*, 25 Ind. 518; *Adams County v. Catholic Diocese of Natchez*, 110 Miss. 890, 71 So. 17. But there is special reason at this time why we have a right to expect a strict construction by the Kentucky Court of Appeals. The state is in a perilous financial condition. Two legislatures have failed to provide for adequate revenue. It is unthinkable that in this financial crisis the Court of Appeals would, by

interpretation, exempt property that is now subject to taxation. The legal fundamentalist may insist that the courts are logic-machines, operating in a vacuum; but the realist is aware that the court should and does consider public policy as the background of its decisions.

ELEANOR DAWSON.

CRIMES—RECKLESS DISREGARD IN THE USE OF FIREARMS.—It is remarkable to note how varied and unsettled the law is as to reckless disregard in the use of firearms. Many jurisdictions hold that where the shooting is unintentional and accidental, no matter how grossly negligent and careless the act, the accused may only be convicted of either voluntary or involuntary manslaughter. Other jurisdictions, however, adopt the apparently harsher rule and hold the defendant for voluntary manslaughter or for murder. After a close perusal of both comparatively old cases and of more modern ones it appears impossible to tell in which direction the tendency lies. The writer believes that for the protection of society, the latter rule, which is also the more stringent one, should be applied in a majority of cases; that is, where a defendant has been found so regardless of human life as to kill another by the reckless use of firearms, and whose only defense is that the death was unintentional, he should be indicted and convicted on a charge of murder.

The hesitancy of courts to follow this rule is exemplified in an early Kentucky case. *Sparks v. Com.*, 3 Bush 116 (1867). The accused while walking down a public street, deliberately fired his pistol over his shoulder, and the shot struck and killed another. The court recognizing the viciousness of the act rendered a verdict of manslaughter and said, "The acts of the accused manifest such recklessness and want of caution as to indicate not only an entire absence of every precaution to prevent the pistol from firing, but impresses the mind that he did recklessly and intentionally so fire it. If a man contrary to law and good order and public security, fires off a pistol in the streets of a town and death be the result, he must answer criminally for it." This could easily have been a verdict of murder, and in a neighboring jurisdiction only a few years later, such a verdict was reached. *State v. Edwards*, 71 Mo. 312 (1879). Defendant while in an intoxicated condition, fired a pistol into a crowd of people collected in a public park. There was a question as to defendant's intention to kill anyone in particular. The jury charge was, "Altho the jury may believe from the evidence that defendant fired into the crowd with no particular intention to kill, yet if he purposely and intentionally did shoot into the crowd with a revolver loaded with gunpowder and by reason of this shot the said deceased died, then you will find the defendant guilty of murder in the second degree." The court found there was no error in the charge. A much later Kentucky case held accused only guilty of manslaughter. *Hawkins v. Com.*, 142 Ky. 188, 133 S. W. 1151 (1911).