OPINION
55-124

October 10, 1955 (OPINION)

TAXATION

RE: Lodges, Clubs - Exemptions

This is in reply to your letter of October 3, 1955, requesting may opinion with respect to the situation set out by you as follows:

> "Many lodges or other organizations specified in subsection 11 of section 57-0208, N.D.R.C. 1943, such as Masonic lodges, Knights of Columbus, American Legion posts, etc., own a lot and a building situated thereon. The lodge may use a part of the building exclusively for the purposes set out in that subsection and lease the other part of the building to private persons or concerns for commercial purposes."

You request an opinion as to whether any part of the value of the building and lot is exempt from taxation.

Section 57-0208, N.D.R.C. of 1943 provides in part, that:

> "All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:
>
> 11. Real and personal property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all real and personal property owned by any fraternity, sorority, or organization of college students if such property shall be used exclusively for such purposes; . . . ."

Such operations or associations as are described in this subsection are also described in section 10-1101. See State ex rel Linde v. Packard, 35 N.D. 298, 313-314, 160 N.W. 150. Both statutes provided that they be "not organized for profit." Presumably, the powers granted under section 10-1106 are broad enough to include the power for such an organization to lease a part or all of its property in return for a rental even though it is "not organized for profit." Presumably, also, the organizations described in subsection 11 of section 57 0208, while "not organized for profit" may lease their property in return for rentals without hereby losing their exempt status. This is because the rentals do not inure to the benefit of individual members of the organizations or associations. See section 10-1114 of the N.D.R.C. of 1943. The fact that a part of the property is leased out for commercial purposes does not therefore destroy the exemption insofar as the phrase "not organized for profit" is concerned.

Next to be considered is the legislative history of section

57 0208(11) with respect to the provisions "if such property shall be used exclusively for such purposes." A study of the former statutes in which 57-0208(11) has its source demonstrates conclusively that the term as used in the former statutes was intended to apply to property owned by all the organizations designated in 57-0208(11), and not just to property owned by "any fraternity, sorority, or organization of college students." See section 2078(9), C.L. 1913. That the same construction must be given to the statute as it appears in 57-0208(11) is evident from section 1-0225, N.D.R.C. 1943, which provides:

> "The provisions of this code so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments."

Property owned by lodges and other such organizations to be exempt from taxation must therefore by used exclusively for places of meeting and for conducting their business and ceremonies.

It then becomes necessary to determine what is meant by the provision in 57-0208(11) "if such property shall be used exclusively for such purposes." There is a divergence of holdings in the various states on such exemption statutes because of a divergence of constitutional and statutory provisions in those states. While various states have exemption provisions similar to 57-0208(11), none has been found which is exactly the same as our provision.

Perhaps one of the leading cases holding that no exemption can be claimed if part of the building is leased to non-exempt organizations is Fitterer v. Crawford, 157 Mo. 51, 50 LRA 191, 57 S.W. 532, decided in 1900. There the building was held to be fully taxable because a part of it was leased for commercial purposes. But the statute involved in that case exempted "lots . . . with the buildings thereon" when used exclusively for the purposes designated. But under an almost identical statute, that is, one exempting "lots with the buildings thereon used exclusively," etc., the Utah Supreme Court in 1918 in Odd Fellows Building Association v. Naylor, 53 Utah 111, 177 P. 214, held that only that part of the building used for commercial purposes should be taxed and that part used exclusively for the lodge purposes was exempt.

The Utah case was cited with approval in Oklahoma County v. Queen City Lodge No. 197, I.O.O.F., 195 Okla. 131, 156 P. 2d. 340, decided in 1940. In construing the Oklahoma constitutional provision exempting "all property used exclusively for religious and charitable purposes" and after finding that the lodge was a charitable organization, the court said on page 354 of the Pacific Reporter:

> "We are convinced that the true rule to be applied to the buildings involved is that it is pro-rata or proportionately exempt from taxation and is pro-rata and proportionately subject to taxation; and that the building and lots should be assessed for ad valorem taxation after the aggregate tax valuation thereof has been ascertained and after there has been deducted therefrom a fair valuation of that portion of the aggregate property which is used separately by the Lodge as heretofore pointed out."

In Christian Business Men's Committee v. State, 228 Minn. 549, 38 N.W. 3d. 803, decided by the Minnesota Supreme Court in 1949, the court in construing a constitutional and statutory provision providing that property of "institutions of purely public charity shall be exempt from taxation" said:

> "The word 'purely' means 'wholly', 'solely' and 'exclusively' in such exemption provision and qualifies the use that may be made of the institution's property." Page 809 of the Reporter.

On page 810 of the Reporter in footnote 5 of that case it is stated that:

> "Obviously the word 'property' may be applied to a portion of a building as well as to the entire building."

And on page 811 of the Reporter the court said:

> "The better rule, which we now adopt and which is followed by many other jurisdictions wherein property is entitled to tax exemption only if it is used EXCLUSIVELY for a tax-exempt purpose, is that when a building is owned by a charitable or other tax exempt institution and one SUBSTANTIAL part thereof is directly, actually, and exclusively occupied by such institution for the purposes for which it was organized and another SUBSTANTIAL portion thereof is primarily used for revenue by rental to the general public, such building with the grounds thereof is pro-rata exempt from taxation and pro-rata taxable according to its separate uses, and it should be assessed and taxed on that portion of its proper assessable value allocated to the taxable use, after deducting from its overall assessable value the portion thereof properly allocable to the proportionate tax-exempt uses."

Assessing officials in North Dakota apparently have long followed the holding in the Minnesota and Oklahoma cases just quoted. The Attorney General's office on February 17, 1942, in a letter to the Pierce County State's Attorney wrote:

> "It has long been the rule in North Dakota that a portion of the property owned by the fraternal organizations and used for income producing purposes is taxable. You will find this rule set forth on page 10 of the 1941 issue of the Assessor's Manual issued by the Tax Commissioner. The fact that the money may be used for lodge purposes is not material insofar as the assessment of the real property is concerned."

In view of the cases cited and of the interpretation placed on this exemption statute by assessing officers and other public officials for many years, it is my opinion that when land with a building thereon is owned by any lodge or organization designated in 57-0208(11) any portion of the property used exclusively for the purposes set out in 57-0208(11) is exempt from assessment and taxation and that any portion leased for private commercial purposes is subject to assessment and taxation. In other words, the assessor should value the entire property, after which he should determine the

value of that portion of the property (land and building) which is not used exclusively for the purposes designated by 57-0208(11) and list it as taxable. The value of the remaining portion of the property used exclusively for the purposes designated by 57-0208(11) should then be entered by the assessor as the valuation of real property exempt from taxation as provided in section 57-0214.

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