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SPRINGFIELD

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FILE NO. S-672

TAXATION:
Cemetery property

Honorable Dayton L. Thomas
State's Attorney
Gallatin County
P. O. Box 412
Shawneetown, Illinois 62984

Dear Mr. Thomas:

I have your recent letter wherein you state:

"The County Treasurer and the Supervisor of Assessments have requested that I write you a letter in regard to the following situation:

Oak Wood Cemetery Association of Omaha, was the recipient of 80 acres of farm land in a Will. The 80 acre tract is not adjacent to the Oak Wood Cemetery, provided however, the income from the 80 acre tract will be used for the maintenance of the cemetery. Since the 80 acre tract was devised outright to the cemetery association (not in trust) and in light of

Section 49 of Chapter 21, of Illinois Revised Statutes, should the 80 acres be exempt from real estate taxes?

Thank you in advance for your prompt attention in this request."

Section 6 of Article IX of the 1970 Illinois Constitution provides as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. * * * "

You have subsequently advised that the cemetery in question was organized in 1954 pursuant to "AN ACT to provide for the organization, ownership, management and control of Cemetery Associations". (Ill. Rev. Stat. 1971, ch. 21, pars. 35 through 55.) Section 14 of said act (Ill. Rev. Stat. 1971, ch. 21, par. 49) provides:

"The property, both real and personal, of any association organized under this act, shall be forever exempt from taxation for any and all purposes."

It can be observed that the foregoing statute is broader than the provisions in the constitution. In this connection, the court said in Locust Grove Cemetery Ass'n. v. Rose, 16 Ill. 2d 132 at page 137:

"It has long been held that section 3 of article IX of the Illinois constitution of 1870 is not self-executing and requires a statute to provide the exemption. However, the statute cannot be made broader than the provisions of the constitution and no property except that mentioned in the section can be exempted by any law passed by the legislature. Oak Ridge Cemetery Corp. v. Tax Com. 299 Ill. 430; Consolidated Coal Co. v. Miller, 236 Ill. 149."

One fundamental legal principle is that which requires that in determining whether property is included within the scope of an exemption, the statute must be strictly construed and all questions resolved in favor of taxation. Association of American Medical Colleges v. Lorenz, 17 Ill. 2d 1250; Glen Oak Cemetery Co. v. Board of Appeals, 358 Ill. 48; People ex rel. Cannon v. Southern Illinois Hospital Corporation, 404 Ill. 66.

You have asked whether or not 80 acres of farm land devised outright (not in trust) to the Oak Wood Cemetery Association of Omaha is subject to real estate taxes. You also have indicated that the 80-acre tract is being farmed and the income will be used for the maintenance of the cemetery. Every Illinois case faced with this question has held that property owned outright by a cemetery, and not used for cemetery purposes, is

subject to real estate taxes. One example is Glen Oak Cemetery Co. v. Board of Appeals, 358 Ill. 48. In this decision, it was held that a cemetery company was required to pay real estate taxes upon its south 40 acres since it was not being used exclusively for burial purposes, as contemplated by the constitution. It should be pointed out, however, that the cemetery company in this case was organized under the general corporation act, although I do not believe that this is a material difference. The court said at page 51:

" * * * Courts should act with great caution in declaring property exempt from taxation, and only such property as manifestly falls within the constitutional provision should escape the payment of taxes. * * *"

A case which is analogous to the facts which you have presented is Monticello Seminary v. Board of Review, 249 Ill. 481. It was held therein that credits consisting of bonds and secured notes belonging to a school and representing money derived from tuition, board and other income of the school, not including donations for a particular purpose, are not exempt from taxation as property of a school not used with a view to profit, even though it was stipulated that the income was used for the maintenance of the school and the benefit of its students. The court said at page 484:

" * * * There is no restriction on the use of the principal or interest of any portion of the fund. So far as appears it may be used for any purpose. It must be held that this principal fund is being loaned out and used with a 'view to profit,' as that term is used in our law, and was properly held not exempt. * * * "

Also, in Chicago Theological Seminary v. People, 189 Ill. 439, the Illinois Supreme Court held that property rented or held by an educational institution as an investment even though the income thereof is used solely for school purposes, is not exempt.

Another case in point is Spring Hill Cemetery v. Ryan, 20 Ill. 2d 608. It was held therein that where a cemetery association devotes a part of its land to use as a manager's residence and leases another part to a company maintaining a television station thereon, no trust being involved, neither of the tracts are entitled to tax exemption even though the association received benefits directly and indirectly from such uses. It was held that it is the primary, not the incidental use of property which determines its status for taxation.

In conclusion, I am of the opinion that the 80-acre tract which is owned outright (not in trust) and which is being

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farmed, is not exempt from real estate taxes even though the income from the tract will be used for the maintenance of the cemetery.

Very truly yours,

A T T O R N E Y G E N E R A L