

## OFFICIAL OPINION NO 37

July 11, 1947.

Hon. John Nigh, Director,  
State Conservation Department,  
State Library Building,  
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of May 14th requesting my official opinion as follows:

“The Bass Lake Conservation Club of Starke County has written me asking whether the real estate, club house and personal property of the Club is subject to property taxes. The Club also wants to know whether as mortgagor the Club must pay for the state intangible tax on the instrument renewing its mortgage.

“The Club is not incorporated. Under its by-laws (which are inclosed with the letter of the Secretary), it appears to be a voluntary association organized to protect the natural resources of Bass Lake, its water level and wild-life and to ‘support the activities of the Department of Conservation of the State of Indiana.’ The Secretary says that the Club House and other property is not used for profit and used by no one but Club Members for the purposes set forth in its by-laws.

“There have been over 900 such Conservation Clubs organized in Indiana of which 150 own real estate with club houses. They were organized and are sponsored in great measure by the Department and this question of their liability for taxes has been frequently raised.

“I would appreciate your opinion of whether the Bass Lake Club and similar non-profit associations are liable for property taxes, for payment of intangible and gross income taxes.”

The provision of the property tax law here applicable is contained in Sec. 64-201, Burns' 1945 Supp. as amended by Chapter 33 of the Acts of 1945 and is as follows:

"The following property shall be exempt from taxation:

"\* \* \*

"Fifth. Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or incorporation, provided the same is owned and actually occupied by the institution, individual, association or incorporation using it for such purpose or purposes, and every building owned and occupied, used and set apart for educational, literary, scientific, fraternal or charitable purposes by any town, township, city or county, and the tract of land on which such building is situate, including the campus and athletic grounds of any education(al) institution not exceeding fifty (50) acres; also the lands purchased with the bona fide intention of erecting buildings for such use thereon not exceeding forty (40) acres; also the personal property endowment funds, and interest thereon, belonging to any such institution or any town, township, city or county and connected with, used or set apart for any of the purposes aforesaid."

It is further provided in Sec. 3 of Chapter 59, Acts of 1919, as amended by Section 1, Chapter 111, Acts of 1943 (Section 64-103, Burns' 1943 Replacement):

"All property within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.

\* \* \*"

These exemptions are established pursuant to Section 1, Article 10, of the Constitution of Indiana, as follows:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure

a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specifically exempted by law.”

See Grand Lodge Hall Association v. Moore (1946), 224 Ind. 575, 70 N. E. (2d) 19.

Such statutes exempting property from taxation are to be strictly construed against exemption and in favor of taxation.

United Brethren Publishing Establishment v. Shaffer (1920), 74 Ind. App. 178.

The burden is upon one claiming the exemption to show that the property comes within some class of property exempted by statute.

LaFontaine Lodge v. Eviston (1919), 71 Ind. App. 445.

Such claim of exemption is a mixed question of law and fact and the claimant has the burden of producing sufficient evidence to show that the statutory provision upon which he relies is in fact applicable.

Conklin v. Cambridge City (1877), 58 Ind. 130, 133.

Such facts must be shown to exist as of March 1st of the particular tax year.

Stark v. Kreyling (1934), 207 Ind. 128.

It must be noted that the statute first above cited restricts the exemption to buildings or parts of buildings:

“\* \* \* used and set apart for \* \* \* charitable purposes by any \* \* \* association \* \* \*, provided the same is owned and actually occupied by the association \* \* \* using it for such purpose or purposes, \* \* \*”

Thus, the facts produced must show that the claimant of the exemption: (1) owns and occupies the property claimed to be exempt, and (2) uses and sets apart the property exclusively for charitable, scientific, literary, fraternal or educational purposes. Property used for an exempt purpose is not exempt unless the ownership is in the user.

Spohn v. Stark (1925), 197 Ind. 299.

Conversely, property owned by a charitable organization is not exempt if it is not exclusively used by the owner, even though a rental obtained therefrom is used for charitable purposes.

Orr v. Baker (1853), 4 Ind. 86;

Indianapolis v. Grand Lodge (1865), 25 Ind. 515;

Traveller's Ins. Co. v. Kent (1898), 151 Ind. 349;

Opinions of Attorney General: (1886-8), p. 120; (1896-8), p. 165; (1902-4), p. 37; (1915-6), p. 587; (1923-5), p. 559; (1918-20), p. 493.

However social use incidental to the exempt purpose will not defeat the exemption.

State, *ex rel.* v. Allen (1919), 189 Ind. 369.

In a case involving an attempt to subject property to taxes our Appellate Court has defined a charity as follows:

“The gift to a public use is not unlawful as a charity because it is not for the purpose of relieving poverty. Such gifts may extend to the rich as well as to the poor. Charity is not confined to the relief of poverty or distress, but has a wider signification, which embraces the improvement and promotion of the happiness of mankind.” (Barr, *Trustee v. Geary*, Auditor (1924), 82 Ind. App. 5, 28).

It has been specifically held that an organization devoted to conservation of wild life is a charitable organization. More

Game Birds in America v. Boettger (1940), 125 N. J. L. 97, 100, 14 Atl. (2d) 778.

However, it has been previously noted that the right to exemption is an issue of both law and fact. Sufficient evidence of facts which bring the property within the statute must be produced by the one claiming the exemption. To this end the statutes have provided that an exemption to be effective must be claimed. It is required that a petition be filed with the County Auditor each year on or before March 1st and that such petition be determined by the County Board of Review.

Acts 1937, Ch. 294, Sec. 1 (Sec. 64-213, Burns' 1943 Replacement).

I am not in a position to decide the issue of fact which may be presented to the County Board of Review, but if it be assumed that on March 1st the property in question is owned and occupied by the conservation club and *exclusively used and set aside* for the purposes stated in Sections 1 and 2 of its by-laws (with only an incidental use for the purposes of section 3) as furnished by you, as follows:

"Section 1. The objects of this club shall be: The preservation of the natural resources of Bass Lake in Starke County, Indiana, and the lands adjacent thereto; particularly the maintenance of the proper water level of said lake, the restocking of same with game fish and the protection of same, the raising and release of game birds on the adjoining lands, and the support of all other activities of the Department of Conservation of the State of Indiana.

"Section 2. To actively co-operate with the County and District Conservation Councils, the Indiana Conservation Advisory Committee, and the Department of Conservation of the State of Indiana.

"Section 3. To promote neighborly friendship and good-will among its members by arranging social activities after business meetings and at other times."

then, I would be of the opinion that the Board of Review would be justified in granting the exemption.

Section 1 of Chapter 170 of the Acts of 1945 (Sec. 64-942 Burns' 1945 Supp.) as amended by Chapter 346 of the Acts of 1947 reads as follows:

“\* \* \* Section 1. No intangibles tax shall be imposed upon or collected on intangibles at any time after February 27, 1933, owned by or held for the use and benefit of any corporation, institution, foundation, trust or association operating exclusively for religious, charitable, educational, hospital, scientific, fraternal, civic or cemetery purposes and not for a private profit.”

Upon the authorities cited above, it would appear that if the facts are as above assumed the conservation club is a charitable association and that intangibles owned by or held for such club would be exempt.

The provisions of the Gross Income Tax on the contrary are quite different. Section 64-2606, Burns' 1945 Supp., the latest amendment of which is Sec. 2 of Chapter 143 of the Acts of 1945 contains the following pertinent provisions:

“There shall be excepted from the gross income taxable under this act:

“\* \* \*

“(i) Amounts received by institutions, trusts, groups and bodies organized and operated exclusively for religious, charitable, scientific, fraternal, educational, social and/or civic purposes and not for private benefit, as contributions, tuition fees, initiation fees, matriculation fees, membership fees, and earnings on, or receipts from, sales of intangible property owned by them: \* \* \*”

It will be noted from this language that charitable organizations are only partially exempt from Gross Income Tax and the income which is exempt is specifically mentioned by statute. As to such income, the reasoning above applied to the property tax would be applicable. As to any other income, there would of course be no exemption.

It is, therefore, my opinion that if the facts are as above assumed (1) a conservation club having as its objects the

preservation of natural resources, the protection of wild life and the support of the activities of the Department of Conservation and owning and operating property which is exclusively used and set aside for such purposes may properly be held exempt from property tax thereon upon proper application duly made and filed with the County Auditor pursuant to law; (2) intangible property owned by or held for the use and benefit of such organization is not taxable under the intangible tax law of this State; and (3) contributions, tuition fees, initiation fees, matriculation fees, membership fees and earnings on or receipts from sales of intangible property by such an organization are exempt from gross income tax, but all other receipts of such organization are subject to gross income tax.

A final note of caution should be added, that this opinion should be limited to the facts assumed and not applied as a general rule of law to all conservation clubs.

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OFFICIAL OPINION NO. 38

July 14, 1947.

Hon. Kenneth A. Weddle,  
Securities Commissioner,  
201 State House,  
Indianapolis, Indiana.

Dear Mr. Weddle:

This will acknowledge receipt of your letter of June 17, 1947, in which you submit the following question:

“Your official opinion be and is hereby respectfully requested in reference to Section 5 (h) of the Indiana Securities Act as amended by the Acts of the General Assembly for the year 1947 which in said amendment form, reads as follows: ‘the sale and issuance of securities of a corporation, the stock of which is closely held, sold or distributed by it exclusively among its own stockholders, where no commission or other remuneration is paid or given, directly or indirectly, in connection with the sale or distribution of such secur-