STATE BOARD OF TAX COMMISSIONERS: Taxation, exemption where property is leased to an exempt lessee.

June 1, 1943.

Hon. Charles H. Bedwell,
Chairman, State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Mr. Bedwell:

This will acknowledge receipt of your letter dated May 27th, 1943, stating that numerous petitions or applications are filed with the State Board of Tax Commissioners asking it to approve contracts, leases or other arrangements made by county, township, town or city officials with property owners under the general terms of which real estate owned by the particular individual is used for some governmental or charitable purpose, and containing an agreement that during the period of user for such purpose, the particular real estate will be exempt from the payment of property taxes. Your letter further states that these agreements involve user by the American Red Cross, Civilian Defense, relief agencies, patriotic organizations as well as governmental departments or agencies.

Your letter then asks the following questions:

1. "Does any legal authority or right exist for the making or approval by local officials or this Board of such arrangements for the exemption of real estate from the payment of taxes?"
2. "If any legal authority does exist, in whom is it vested, and what are the limitations thereon?"

Burns’ R. S. 1933, Section 64-103 in part reads as follows:

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

Burns’ R. S. 1942 Pocket Supplement, Section 64-201 in part reads 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, * * *.

“Ninth. Any real and personal property owned by any Young Men’s Christian Association, etc., * * *.

“Twenty-first. All real estate and personal property actually owned and used exclusively by the Indiana National Guard or any other military organization of the state for armory purposes.”

Before any real estate can be legally exempt from taxation such real estate must come within one of the provisions of the above quoted statute, which expressly authorizes such exemptions. The italicized words in the above quoted statute clearly indicate an intention upon the part of the Legislature that as a prerequisite of any claim for exemption of any real estate from taxation in the state of Indiana, such real estate must be actually owned, used and occupied by some organization specifically mentioned in the statute. In other words, such organization must own and hold the legal title to any such real estate and the statute does not exempt any real estate which is occupied and used under a lease or rental contract or agreement.

Such interpretation is fully supported by the decisions of the Supreme Court of Indiana. See

Spohn v. Stark, Treasurer, 197 Ind. 299, on pages 302, 303;
Mehne, Treasurer, v. Dillon, 203 Ind. 346, on pages 354 and 355;
Chadwick, Treasurer, v. City of Crawfordsville, 216 Ind. 399, on pages 404, 405.

In addition to the above authorities I also call your attention to an opinion of the Attorney General of Indiana, dated April
19th, 1933, Opinions of the Attorney General 1933, page 163, which held that privately owned property leased by the state for use as National Guard armory is not tax exempt. I agree and reaffirm the conclusions stated in this opinion.

Under the law as clearly and firmly established by all of the above authorities, it is my opinion that the proper answer to your first question is in the negative.

In view of my answer to your first question it is not necessary to answer your second question.

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BUREAU OF MOTOR VEHICLES: Farm Tractors, fee for registration of farm tractors.

June 1, 1943.

Mr. R. McDaniel,
Director, Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Mr. McDaniel:

I am in receipt of your letter of May 26th, 1943, requesting an interpretation of the provisions of Chapter 81, Acts of 1943. Your letter quotes the following language contained in the second paragraph of Section 1 of Chapter 81, Acts of 1943, reading as follows:

“For each special farm tractor, including the trailer, wagon or vehicle pulled, used in transportation, the fee shall be three dollars.”

Also the following language contained in the second paragraph of Section 2, which reads as follows:

“The term ‘farm tractor used in transportation’ shall mean any farm tractor, including the wagon, trailer or other vehicle pulled by such tractor, used by the owner or operator for the transportation, but not for hire, of commodities upon the highways except between farms.”