

**TAX COMMISSIONERS, STATE BOARD OF: Taxation—  
right of St. Joseph College to claim land as exempt.**

August 3, 1937.

Hon. C. R. Benjamin,  
State Board of Tax Commissioners,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request as to the right of St. Joseph College at Rensselaer, Indiana, to claim 800 acres of land as exempt from taxation.

In connection with this inquiry my attention has been called to the Articles of Association of St. Joseph Orphan Asylum and Manual Labor School, as the same was recorded in the office of the County Recorder of Jasper County on December 6, 1869. Under these Articles of Association the purpose of the institution was "to establish and maintain an orphan asylum and manual labor school for orphans and other destitute children and to train them to virtue, industry and learning on a farm known as the 'Spitler Farm' consisting of three hundred and twenty acres" the same being part of the land now sought to be held exempt from taxes.

My attention is further directed to the Articles of Incorporation of St. Joseph's College, as recorded in the office of the County Recorder of Jasper County, March 1, 1922. The purpose of this organization, as announced in the Articles of Incorporation, "shall be the education of young men in all the branches of science and instruction secular as well as religious." The endowment fund embraces a donation of a farm of 320 acres, the description of which is not given but I assume it is a different tract from the tract described as the "Spitler Farm" which was the property described in the Articles of Association of St. Joseph Orphan Asylum and Manual Labor School.

I have no information as to whether both of these corporations are still in existence and in operation. From the information furnished I assume that they are. Proceeding upon this basis your attention is called to the fourth paragraph of section 64-201, Burns Indiana Statutes, 1933 Revision, which reads as follows:

"The personal property and real estate of every manual labor school or of any technical high school,

trade school or college incorporated within this state when used or occupied for the purpose for which it was incorporated, such real estate not to exceed eight hundred (800) acres in any one (1) county of this state.”

It is my opinion, therefore, that as to the corporation which is operating as the St. Joseph Orphan Asylum and Manual Labor School and as to real estate owned by such association and actually used and occupied for the purposes for which such association was incorporated, they might lawfully claim such real estate as exempt to an amount not exceeding 800 acres.

Our courts have frequently announced the rule that the statute which exempts persons or property from taxation is to be strictly construed.

U. B. Pub. Establishment v. Shaffer, 74 Ind. App. 178.

Again, the Supreme Court of Illinois in the case of People v. University of Illinois, 192 N. E. 243, announced the principle that:

“The mere fact that property is owned by a school and is not leased or otherwise used with a view to profit is not sufficient to exempt it from taxation unless it is used exclusively for school purposes.”

Further in the same case this sentence appears:

“The use to which the lands are exclusively put is the determining factor; not how a part or all of the net income is used.”

Again, in the case of People, etc., v. Catholic Bishop of Chicago, 142 N. E. 520, the court announces the principle that the primary use of such property must be considered and the use of the property chiefly determines its right to exemption. In this case a tract of eighty acres owned by the Catholic Seminary and intended for use as a golf course in connection with the school for purposes of recreation was not sufficient to exempt it from taxation.

Our Appellate Court in the case of Barr, Trustee, v. Geary, Auditor, 82 Ind. App. 5, announces the rule as follows:

“It was clearly the intention of the legislature that the property must be exclusive and wholly used and

applied for some of the purposes named, in order to be exempt from taxation. \* \* \* Exemption from taxation must positively appear, and no implication will arise that any species of property, or subject of taxation was intended to be excluded if it comes within the fair purview of the statute imposing the tax."

It is my opinion, therefore, that if the St. Joseph Orphan Asylum and Manual Labor School can show title to 800 acres of land actually used and occupied for the purpose of maintaining such institution and for the purposes of training destitute children to virtue, industry and learning, such real estate would be entitled to exemption under the above statute.

The situation as to St. Joseph's College is, in my opinion, governed by the fifth clause of section 64-201, Burns Indiana Statute, 1933 Revision, which reads as follows:

"Every building used and set apart for educational, literary, scientific or charitable purposes by any institution or by any individual or individuals, associations or incorporations, or used for the same purpose 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 educational 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 institution, town, township, city or county and connected with, used or set apart for any of the purposes aforesaid."

It would seem that under this section of the statute the right of exemption to the educational institution is limited to 50 acres on which the buildings and campus are situated, together with an additional 40 acres intended for building purposes.

The fourteenth clause of the above mentioned statute reads as follows:

"Any money or property given by will, or otherwise, to any executor or other trustee to be by him used and applied for the use and benefit of any municipal, educational, literary, scientific, religious or charitable pur-

pose within the State of Indiana: Provided, Such executor or trustee shall diligently and in good faith carry out the provisions of the will or other trust arrangement, and use and apply such money or property to the purpose for which the same is donated.”

I am unable to determine from the facts before me whether any of this property is held in trust for the use and benefit of St. Joseph's College. My information is that St. Joseph's College owns this real estate in fee simple and that they are not limited by any trust agreements. If this property is held in trust then in my opinion the entire amount so held, which is used for the purposes for which the trust was created, will be exempt from taxation.

I find no authority in the statute which exempts property from taxation merely because the rents and revenues of such property are devoted to educational or charitable purposes. A number of states have held that:

“\* \* \* land owned by a charitable institution and operated as a farm, either for the purpose of furnishing employment to the beneficiaries, or for supplying the institution with farm products for food, is exempt from taxation; at least if the land is farmed primarily for those purposes, and not with a view to profit.”

Anno. 34 A. L. R. 665.

An examination of these cases will disclose, however, that each state has a statute exempting from taxation the lands actually used for educational or charitable purposes. It will be noted that our statute does not so read.

It is my opinion that since the facts are involved and complicated in this matter, perhaps the same should be submitted to the court for a declaratory judgment. If the above citations of authority meet the situation, however, perhaps this opinion will be of assistance.