TAX COMMISSION, STATE BOARD OF: Taxation, Indiana University; taxability of real estate owned by university.

July 13, 1938.

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

Dear Sir:

I have before me your request for an official opinion as to the taxability of certain real estate conveyed by James B. Nelson and Grace J. Nelson, his wife, to trustees of Indiana University under date of February 24, 1930 and still held by said University. The real estate involved in your question is located in Johnson County, Indiana, and is described as follows:

"A part of the northwest quarter of section five (5), township thirteen (13) north, range four (4) east of the 2nd Principal Meridian: Beginning at the northeast corner thereof; thence west on the north line, thirty-three (33) chains and ninety-five (95) links; thence south and parallel with the west line of said quarter section, thirty (30) chains and nineteen (19) links, to the south line thereof; thence east on said line, thirty-three (33) chains and ninety-four (94) links to the southeast corner of said quarter section; thence north on the east line thereof, to the place of beginning.

ALSO:

A part of the northeast quarter and a part of the southeast quarter of section five (5), township thirteen (13) north, range four (4) east of the 2nd Principal Meridian: Beginning at the southwest corner of the northeast quarter of said section running thence east on the south line, thirteen (13) chains and eighty-one (81) links thence south, six (6) chains and sixty-seven (67) links; thence east and parallel with the north line of the southeast quarter of said section, twelve (12) chains and sixty-eight (68) links to the west line of the Madison and Indianapolis state road; thence north fourteen (14) degrees west, with said line to the north line of said southeast quarter section; thence with the middle line of said road to the north line of the northeast quar-
ter of said section five (5); thence west on said north line, seventeen (17) chains and ninety-one (91) links; thence south to the place of beginning, being 180 acres, more or less.”

I am advised that at the time of the above conveyance a preliminary contract was entered into in relation thereto setting out the conditions of the grant which is referred to as a gift from the grantor to the grantee. The provisions of this preliminary contract are not revealed. However, later, on December 28, 1931, a contract defining the terms of said grant was entered into between the parties in which the preliminary agreement was referred to and in which it was stated as a reason for the contract of December 28, 1931 that doubt existed when the deed was made and the preliminary contract was entered into as to whether the university had the power to enter into the preliminary contract but that such doubt had been removed by the enlargement of the powers of the university by an Act of the General Assembly. See Acts of 1931, page 505.

This contract (the contract of December 28, 1931), provides, among other things, for the transfer by James B. Nelson and wife to the university of three tracts of real estate located in Marion County, Indiana, and designated as Tract Nos. 1, 2 and 3. Each of these tracts were subject to a ninety-nine-year lease. It also provided for the transfer by said Nelson and wife to the university of one tract located in Johnson County, Indiana, and designated as Tract No. 4. This is the tract above described and the only one to which your question is addressed. The contract also provides for the payment, by the university to the donor, his wife and daughter, of certain annuities so long as either one of them shall live. It is provided that the Johnson County tract shall be accepted as one of the fair present value of forty-four thousand dollars ($44,000.00) and the annuity to be paid in relation thereto is based upon that valuation computed at an interest rate of four and one-half per cent (4½%) per annum.

Said contract also provides with respect to the Johnson County land as follows:

“The donor agrees that he and/or the other annuitants will rent said Tract No. 4 from the donee from year to year, so long as the donee shall own said farm
and be required to pay said annuity, at an annual rental of $1,980.00 and the annuity in relation to said Tract No. 4 shall be payable only out of such rental; provided however that if a part or parts of said Tract No. 4 shall be sold by the donee, then the annual rental shall be reduced from time to time as such sales are made by an amount equal to four and one-half (4½%) per cent per annum on the net amount received by the donee from such sales; and the donee shall pay to said annuitants an amount equal to the net amount received by donee, and in no case less than four and one-half (4½%) per cent per annum on the net amount received from such sales; and provided further, that if and when the donee shall receive from such sales a net amount equal to $44,000, then said annuitants shall be fully released from all obligation to rent said tract as herein agreed and the annuity to be thereafter paid in relation to said tract shall be an amount equal to four and one-half (4½%) per cent per annum computed upon $44,000, or upon such greater net sum as the donee may receive from the sale of said tract.”

You request an opinion as to whether the property under the above conditions is taxable to the university.

Under the twenty-sixth subdivision of section 64-201 of Burns' Indiana Statutes Annotated (1933) the annuity apparently is exempt from property taxation. The amendment of this section in 1937 does not affect this annuity contract for which was made prior to the amendatory legislation.

I do not think the real estate is subject to taxation in the name of the university. In an opinion to the State Board of Tax Commissioners, dated April 14, 1938, I held that the university is an agency of the state and that property held by it is exempt from taxation under the provisions of the first subdivision of section 64-201, supra.

In this same opinion, however, I held that the lessee in the case of a ninety-nine (99) year lease would not be freed from liability to taxation because of the exemption as applied to the university owing to the provisions of section 64-513 of Burns' Indiana Statutes Annotated of 1933, which provides as follows:

“When real estate which is exempt from taxation is leased to another whose property is not exempt, and the
leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

Under the contract in this case it is agreed that the first annuitant shall lease the property involved from the university during his life and that each successive annuitant will lease said property during the life of such annuitant so long as the property is owned by the university. I think that the above section of the statute applies to such a case and that the opinion heretofore given, dated April 14, 1938, is controlling.

In my opinion the real estate is exempt from taxation insofar as the university is concerned; that the annuity is also exempt from taxation, but that the leasehold interest is subject to taxation as real estate under the provisions of section 64-513 of Burns' Indiana Statutes Annotated of 1933.

See San Pedro L. A. & S. L. R. Co. v. City of Los Angeles (Cal.), 170 Pa. 393;
See also, Mehne, Treas. v. Dillon, 203 Ind. 346.

MUSCATATUCK COLONY: Whether superintendent is a lucrative officer and must vacate office of member of General Assembly.

July 14, 1938.

Dr. George E. Denny,
Medical Superintendent, Muscatatuck Colony,
Butlerville, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of July 13, 1938, in which you submit the question as to your eligibility to serve in the Special Session of the Indiana General Assembly called for July 19.

The fact that you are now the duly appointed, qualified and acting superintendent of the Muscatatuck Colony of Butlerville, Indiana, raises the question as to whether or not such appointment does not operate to vacate your office as a member of the General Assembly.
and be required to pay said annuity, at an annual rental of $1,980.00 and the annuity in relation to said Tract No. 4 shall be payable only out of such rental; provided however that if a part or parts of said Tract No. 4 shall be sold by the donee, then the annual rental shall be reduced from time to time as such sales are made by an amount equal to four and one-half (4½%) per cent per annum on the net amount received by the donee from such sales; and the donee shall pay to said annuitants an amount equal to the net amount received by donee, and in no case less than four and one-half (4½%) per cent per annum on the net amount received from such sales; and provided further, that if and when the donee shall receive from such sales a net amount equal to $44,000, then said annuitants shall be fully released from all obligation to rent said tract as herein agreed and the annuity to be thereafter paid in relation to said tract shall be an amount equal to four and one-half (4½%) per cent per annum computed upon $44,000, or upon such greater net sum as the donee may receive from the sale of said tract."

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