2269.

AMERICAN LEGION—KINDS OF PROPERTY EXEMPT FROM TAXATION DISCUSSED.

SYLLABUS:

1. *The American Legion is purely a patriotic, educational and charitable institution, and all property owned and used by it exclusively for its fundamental purposes, is exempt from taxation.*

2. *Property, the title of which is in the name of park trustees, for a post of The American Legion, which has been dedicated as a memorial to the soldiers and sailors of the county, and devoted exclusively to the free use of the public for park, playground and recreational purposes, is exempt from taxation as property used exclusively for charitable purposes under the provisions of Section* 5353, *General Code.*

3. *In construing the phrase "used exclusively for charitable purposes" a common sense demarcation is to be made between uses for a dominant purpose and uses which are only incidental or sporadic in their nature. An incidental use or an occasional isolated use for a purpose which is not strictly charitable does not destroy the right of exemption.*

4. *Realty owned by The American Legion which is leased with a view of commercial profit, is subject to taxation, even though the proceeds are devoted exclusively to charitable purposes; however, an occasional temporary letting for the purpose of holding meetings, entertainments and the like, not with a view to commercial profit, but only with a view of helping to meet the expenses of maintenance and upkeep of the property, does not destroy the right to exemption.*

5. *Land or buildings owned by The American Legion, which is vacant and not used for any purpose, is subject to taxation, even though the Legion intends to use such property for its purposes sometime in the future.*

6. *Property owned by The American Legion and used exclusively by it as its headquarters and meeting place and from which its activities are projected, is exempt from taxation even though it is used for the incidental purpose of social enjoyment.*

7. *In general, the same rules are applied to personal property as are applicable to realty, in determining whether or not it is subject to taxation.*

COLUMBUS, OHIO, August 30, 1930.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I wish to acknowledge the receipt of a letter from you, making inquiry about the exemption from taxation of certain property belonging to The American Legion. I have in hand also a letter from Hon. R. D. Williams, Prosecuting Attorney of Athens County, requesting an opinion on a similar matter. In view of the fact that these interrogatories relate to matters pari materia, and that much of the analysis and discussion of one is relevant to the other, I shall undertake, in order to avoid repetition, to consider them in one opinion. Your letter states in part:

> "The Tax Commission has before it application for exemption of certain property in Paris Township, Union County, the title of which is in the name of Park Trustees Union Post No. 79, American Legion. The application states that this park is used entirely for charitable purposes. It is equipped with playground, camping facilities, rest room and is open to the general public free from any charge. The property has been dedicated, with proper ceremonies, as a memorial to Union County Soldiers and Sailors.

The Commission is very desirous of knowing just what its rights are in this matter as American Legion Posts will, no doubt, in the future indulge in park movements such as this."

The communication of Prosecuting Attorney Williams, which discloses a much wider involvement, is as follows:

"K. T. Crossen Post No. 21 of the American Legion, with headquarters at Athens, Ohio, owns certain property both real and personal. I am advised that this property was acquired at least in the main, by money growing out of and resulting from the dissolution of a fund commonly known as the 'Community Chest Fund', and the distribution of such fund remaining at the culmination of the recent World War. The American Legion also has a Post and property at both Glouster and Nelsonville, Ohio. These properties are all on the tax duplicate of Athens County, Ohio, and, of course, bear their proportionate share of taxes assessed. The American Legion is objecting to the taxation and asks that these properties be removed from the tax duplicate.

QUERY: Is there any legal process or any manner by which the county auditor and other taxing officials of this county can legally exempt this property?"

The latter request is rendered more difficult because it does not specify the particular uses to which the property mentioned is subjected. However, I shall undertake to consider a few or the ordinary uses of such property as reason and the authorities suggest them to me.

The solution of these inquiries depends upon a determination of whether the property in question falls within the fiat of the constitutional and statutory provisions which grant exemption from taxation. The pertinent provisions requiring examination are Article XII, Section 2 of the Ohio Constitution and Sections 5328 and 5353 of the General Code of Ohio.

Article XII, Section 2 of the Ohio Constitution, as amended in 1912 to its present form, provides in part as follows:

"Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money * * * but * * * institutions used exclusively for charitable purposes * * * may, by general laws, be exempted from taxation * * * ."

In obedience to the mandatory instructions of Article XII, Section 2 of the Constitution to pass taxation laws, Section 5328 of the General Code, was enacted by the Legislature to read:

"All real or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. * * * "

In relation to our problem, the effect of Article XII, Section 2 of the Constitution and Section 5328, of the General Code, is stated succinctly, in the third paragraph of the syllabus of *Wilson* vs. *Licking Aerie,* 104 O. S. 137, to be:

"Section 5328, General Code, passed pursuant to the requirement of Section 2, Article XII of the Constitution requires that 'all real or personal property in this state * * * shall be subject to taxation, except only such property as may be expressly exempted therefrom'. The exemption must be clearly and expressly stated in the statute and must be such only as the above section of the constitution authorizes to be exempted."

Thus, it is to be observed, that the above quoted portion of Article XII, Section 2 of the Constitution pertaining to tax exemption does not ipso facto exempt any property from taxation. It merely established the confines within which the Legislature may, if it chooses, immunize property from taxation. Furthermore, all property in the state, unless properly exempted, must be taxed.

Pursuant to the authoritative sanction of Article XII, Section 2 of the Constitution, the Legislature in 1923 (110 O. L. 77) amended Section 5353 of the General Code to read in part:

" * * * property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation."

It has come to be the settled view of the Supreme Court of Ohio that whether or not any given property is exempt from taxation within the meaning of the constitutional and statutory provisions above quoted turns entirely upon the use which is made of that property, and not upon its ownership. Use, not ownership, is the criterion. Thus, in the comparatively recent case of *Jones, Treas.*, vs. *Conn*, 116 O. S. 1, the court, at page 10, in speaking of the change in the provision of Section 2 of Article XII of the Constitution to its present form as above quoted, said:

"This amendment no doubt did * * * enable the Legislature to exempt from taxation the property of institutions of charity not purely public * * * but it also emphasized the use of the property, and changed the emphasis from the ownership thereof to the manner of its use * * * . Hence it is the use of the property and not the ownership which decides the question, and the exemption must depend upon its actual and exclusive devotion to the work of the institution."

In view of this construction given to Section 2 of Article XII of the Constitution, an examination of the wording of Section 5353 of the General Code convinces me that the Legislature likewise intended that use, and not ownership, of property should be the ultimate test of tax exemption.

However, a consideration of the ownership of property sought to be relieved of taxation is not entirely without pertinence in determining whether that property is legally exempt from taxation. In fact, it has two very salient utilities. First, it enables one to determine what rule of construction is applicable in construing tax exemption provisions; and second, if it should once be determined that any given organization is a purely charitable one, then it can be laid down categorically (for it follows logically) that all property owned by such organization and exclusively used by it for its fundamental purposes, is exempt from taxation.

The last mentioned point is self-explanatory. All the proper fundamental purposes of a purely charitable organization are necessarily charitable; hence all property used exclusively for the fundamental purposes of such organization is used exclusively for charitable purposes and is exempt from taxation. The legal meaning of the phrase "used exclusively" will be considered fully in subsequent paragraphs. As to

the first point, it is a general rule that all statutes which grant exemption from taxation are to be construed strictly. This rule is based upon the very substantial considerations that immunity from taxation is an "extraordinary grace of the sovereign power", derogating from equal rights, and making more onerous the burden of taxation upon other property. *Cincinnati College* vs. *State,* 19 O., 110, at page 115; *Y. W. C. A.* vs. *Spencer,* 9 O. C. C. N. S., at page 635; Zollman on "American Law of Charities" (1924 Edition), Sections 686, 687 and 790.

However, in the case of charitable and educational institutions the rule of strict construction is relaxed, and tax exemption statutes are construed liberally. The reasons which have motivated the courts to adopt this rule are the same ones which justify the very existence of any exemption from taxation at all, viz: the meritorious nature of such institutions; the great benefits which they confer upon the public with the concomitant relief of such burden to the state and a "sense of propriety and fitness in regard to places set apart and devoted to the relief of suffering, or the diffusion of light and knowledge among men". *Watterson* vs. *Holliday,* 77 O. S. 150, at page 169; *Rose Institute* vs. *Myers,* 92 O. S. 252, at page 261; Zollman on "American Law of Charities" (1924 edition, Sections 692, 693, 694, 695 and 790). Thus in Section 693 of Zollman's "American Law of Charities" it is stated:

> "Reasons for the Rule of Liberal Construction. Benefits to State. It has been said that 'the fundamental ground upon which all such exemptions are based is a benefit conferred upon the public by such institutions, and a consequent relief to some extent of the burden upon the state to care for and advance the interests of its citizens'. This reasoning certainly is sound. The benefits derived by the community at large from charitable institutions far outweigh the trivial inequality caused by an exemption of their property. More than a fair equivalent for the exemption afforded to them is returned by their ultimate contribution to the public good. The very objects for which taxes are, in large part, assessed, are to carry on the educational and benevolent institutions of the state; and hence, there is great propriety in avoiding, as the constitution does, the imposition of any taxation upon those agencies which are themselves employed in the very work to which the state applies so large a part of its revenues. Exemptions, therefore, are not merely an act of grace on the part of the state, but stand squarely on state interest. To subject property of charitable institutions to taxation, would tend to diminish rather than increase the amount of taxable property, and would destroy the very life which produces a constant increase of taxable property as well as more valuable benefits. It has, therefore, been stated that it is really a misnomer to call the non-taxation of such property an exemption in favor of the entity in which the title is vested."

Furthermore, even in cases where the rule of strict construction does apply, it must, nevertheless, be a reasonable construction, and should frustrate neither the intention of the framers of the Constitution nor that of the legislators. Thus, the case of *State ex rel* vs. *Erickson,* 44 S. D. 63, in treating this topic, adopts the following language of the Supreme Court of Missouri in *State ex rel* vs. *Johnson,* 214 Mo. 656:

> "Strict construction must still be a reasonable construction, the product of right and clear thinking, or else reason is no longer the life of the law * * * . In getting at the meaning of the constitutional and statutory exemptions, courts, while applying the rule of strict construction, yet take the road, the guide post of common sense."

Bearing upon this same subject, Zollman, in his treatise on the "Law of American Charities", makes the following statement under Section 690 which is entitled "Limitations of the Rule of Strict Construction":

> "It is very important not to misapply the rule and thus by too great a strictness strangle the purpose of the law-making power. Courts certainly are not at liberty to defeat the legislative intent by a strict construction. * * * Certainly, the language of the Legislature, in exempting from taxation, is as much entitled to obedience as that imposing taxation. Nor need the attention be exclusively riveted on the language. The aphorism that exemptions are to be strictly construed is consistent with that reasonable construction that embraces incidents purely within the spirit, if not the terms, of the exception. It certainly is not intended to station a tax-gatherer at the door of the human heart, and thus confine charity a prisoner in her own home. Therefore, the rule of strict construction does not require a limitation of legislative terms to their narrowest meaning nor to any particular meaning. The theory, that the rule requiring strict construction of a tax exemption statute demands that the narrowest possible meaning should be given to words descriptive of the objects of it, would establish too severe a standard. The rule, therefore, comes into play only when the legislative language, after analysis and subjection to the ordinary rules of interpretation present ambiguity. The possibility of a doubt is not sufficient to bring it into operation."

A doubt in order to be fatal to exemption must be a "well-founded" one. *Lee, Treas.,* vs. *Sturges,* 46 O. S. 153, at page 159. However, "intent to confer immunity from taxation must be clear beyond a reasonable doubt". *Wilson* vs. *Licking Aerie,* 104 O. S. 137, at page 144.

Having the above principles in mind, I shall proceed to consider (1) the nature of the organization known as "The American Legion"; (2) the requisites of a charitable institution; and (3) the use of the property about which inquiry is made.

Pertinent factors to be considered in ascertaining the character of an organization are its charter, constitution, by-laws and purposes as revealed in them. The following statement of this principle is found in the first paragraph of the syllabus in *O'Brien, Treas.,* vs. *Hospital Association,* 96 O. S. 1:

> "A corporation, organized not for profit, may show by its charter, constitution and by-laws, or by oral evidence not inconsistent therewith, that it is organized solely for the purpose of administering a public charity * * * ."

On the same subject, it is said in Zollman's "American Law of Charities", Section 701:

> "The character of an institution is to be determined by its purposes and manner of operation * * * ."

It is a singular fact to note that "The American Legion" is one of the relatively few corporations created by an act of the United States Congress. It was created by an act entitled "An Act to incorporate the American Legion". (September 16, 1919, C. 59, Section 1, 41 Stat. 284.) Likewise, it is highly significant of the character of "The American Legion" and of the unique place which it holds in the mind of Congress, its creator, that, in the official "Code of the Laws of the United States", passed by Congress in June 1926, and comprising all the laws of a general and

permanent nature in force at the beginning of that session, the Act creating "The American Legion" is placed under "Title 36" which is officially entitled "Patriotic Societies and Observances", and that under this same "Title 36" are grouped the acts incorporating such other organizations of national, patriotic scope as "The American National Red Cross", the "Boy Scouts of America", the "Belleau Wood Memorial Association", "The Grand Army of the Republic", "The United States Blind Veterans of the World War", the "American War Mothers" and the "American Battle Monuments Commission". (U. S. Code Annotated, Title 36.)

A more minute examination of the act entitled "An act to incorporate the American Legion" throws further light on the nature of the entity created.

Section 41 of Title 36, U. S. C. A. declares:

> "That the following persons, to wit: (then there is named a large group of persons, apparently one from each state, the District of Columbia, Hawaii, and the Philippine Islands) and such persons as may be chosen who are members of the 'American Legion', an unincorporated *patriotic society* of soldiers, sailors, and marines of the Great War, 1917-1918, known as the 'American Legion', and their successors, are hereby created and declared to be a body corporate. The name of this corporation shall be 'The American Legion'." (Italics the writer's.)

Section 42 of Title 36, U. S. C. A., authorizes the persons designated in Section 41 and such other persons as may be selected from the unincorporated society of the "American Legion" to meet and complete the organization of the corporation by the selection of officers, the adoption of a constitution and by-laws, etc.

Section 45 of Title 36, U. S. C. A., relating to membership in "The American Legion," declares:

> "No person shall be a member of this corporation unless he served in the naval or military service of the United States at some time during the period between April 6, 1917, and November 11, 1918, both dates inclusive, and who, being citizens of the United States at the time of enlistment, served in the military or naval services of any of the governments associated with the United States during the Great War.

Section 46 of Title 36, U. S. C. A., provides that the organization shall be non-political and, as an organization, shall not promote the candidacy of any person seeking public office.

Section 49 of Title 36, U. S. C. A., provides that said corporation shall make an annual report of its proceedings to Congress, including a full and complete report of its receipts and expenditures.

Section 44 of Title 36, U. S. C. A., enumerating the powers of said corporation, includes the power "to receive, hold, own, use, and dispose of such real estate and personal property as shall be necessary for its corporate purposes."

Section 43 of Title 36, U. S. C. A., which enumerates the purposes of the corporation, states:

> "The purpose of the corporation shall be: To promote peace and good will among the people of the United States and all the nations of the earth; to preserve the memories and incidents of the Great War of 1917-1918; to cement the ties of love and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country."

In drafting its Constitution, pursuant to the authorization by Congress, "The American Legion" headed it with this preamble:

> "For God and Country, we associate ourselves together for the following purposes:
>
> To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred per cent Americanism; to preserve the memories and incidents of our association in the Great War; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness."

After a careful analysis of the nature of "The American Legion" as revealed by the documents just considered, in view of the great natural bond which necessarily exists between the Legionaries and the nation whose existence their valorous sacrifices saved for us all, considering their dedication of this organization to the many noble purposes already mentioned, each fraught only with the amelioration of that nation's welfare and placing a proper emphasis upon the fact that the Federal Congress saw fit to create the Legion by a special act and to designate it as a patriotic society—all being evidence which I consider sufficient to eradicate any possible doubt—I am convinced that "The American Legion" is an institution purely patriotic and educational, embodying the very apogee of purposes which are solely charitable. Hence it follows that all property owned by The American Legion and exclusively used by it for its fundamental purposes, is exempt from taxation. This position is grounded firmly in a base of adamant by a host of reliable authorities which I beg to call to your attention.

Legally, the word "charity" has a much more comprehensive meaning than it has in popular use. It is not confined to mere relief of the sick and indigent members of society, but extends to the promotion of the general welfare, benefiting rich and poor alike. The following are representative definitions. *Gerke* vs. *Purcell,* 25 O. S. 229 at page 243:

> "The meaning of the word 'charity', in its legal sense, is different from the signification it ordinarily bears. In its legal sense it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose. Lord Camden described a charity as a 'gift to a general public use, which extends to the rich as well as the poor'."

Carter vs. *Whitcomb,* 74 N. H. 482, at page 486:

> "Charitable trusts include all gifts in trust for religious and educational purposes in their ever varying diversity; all gifts for the relief and comfort of the poor, the sick and the afflicted; and all gifts for the public convenience, benefit, utility or ornament, in whatever manner the donors desire to have them applied."

People vs. *Thomas Walters Chapter,* D. A. R., 311, Ill. 304, at pages 308, 309:

> "Charity in a legal sense, is not confined to mere almsgiving or to the

relief of poverty and distress but has a wider signification and embraces the improvement and happiness of man. A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well doing and well being of social man."

Perry on "Trusts" (1929 edition), Section 687, at page 1170:

"Charitable trusts include all gifts in trust for religious and educational purposes in their ever varying diversity; all gifts for the relief and comfort of the poor, the sick and the afflicted; and all gifts for the public convenience, benefit, utility, or ornament, in whatever manner the donors desire to have them applied."

Annotation, 34 A. L. R. 634, at page 635:

"In general it may be said that any body not organized for profit, which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination as to race, color or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes."

5 Ruling Case Law 322, Section 44:

"A charitable trust or a charity is a donation in trust for promoting the welfare of mankind at large, or of a community, or of some class forming a part of it, indefinite as to numbers and individuals. It may, but it need not, confer a gratuitous benefit upon the poor * * * . "

5 Ruling Case Law 291:

"Legal Meaning of Charity. A precise and complete definition of a legal charity is hardly to be found in the books, but it is certain that in a legal parlance the word 'charity' has a much wider signifiance than in common speech. Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing law, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

Zollman on "American Law of Charities," Section 185, page 122:

"It has therefore been said that charity is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man."

The purposes of The American Legion, I believe, are such as to bring the organization within the definition of those legal charities which are devoted to the benefit of the general public welfare. Furthermore, the Legion qualifies as a charity in the educational sense. The authorities quoted above, as well as the following ones, make it clear that educational purposes "in their ever varying diversity" are charitable purposes. Zollmann's "American Law of Charities," Section 291, page 198; 5 Ruling Case Law 330, Section 55; Perry on Trusts, Section 700, page 1186.

Education includes the teaching of patriotism, a sense of duty and obligation to the state and to the nation, the history of the intrepidity and sacrifices of soldiers, loyalty to the flag, the promotion of peace (since our country with the civilized world is now committed to the outlawry of war) and genuine Americanism. This cannot be gainsaid. No less does education include the inculcation of these things than it does the mastery of the rules of syntax.

The Supreme Court of New Hampshire, in the case of *Sargent* vs. *Cornish,* 54 N. H. 19, in a discussion of the meaning of "educational purposes," made the following observation:

> "What are they? Not merely the means of instruction in grammar, or mathematics, or the arts and sciences, but *all that series of instruction and discipline which is intended* to enlighten the understanding, correct the temper, purify the heart, elevate the affections, and *to inculcate generous and patriotic sentiments,* and to form the manner and habits of rising generations and so fit them for usefulness in their future stations.
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> And the means of education are not solely books and printed rules and maxims, but representations and symbols and pagentry, it may be. And it may be questioned if the youth of the land do not derive more of instruction in the holy duty of patriotism and love of country from bonfires and illuminations and the display of the old flag of our Union than from books on the science of government or political economy, or commentaries on the constitution." (Italics the writer's.)

In *Conley* vs. *Daughters of the Republic,* 106 Tex. 80, the question arose as to whether an organization known as the "Daughters of the Republic" was lawfully incorporated under the statute providing

> "The purposes for which private corporations may be formed are * * 2. The support of any benevolent, charitable, educational or missionary undertaking."

The purposes of the organization as expressed in its charter were to perpetuate the memory and spirit of men and women who had achieved the independence of Texas; to encourage historical research into the earliest records of Texas, especially those relating to the revolution of 1835 and the events that followed; to foster the preservation of documents and relics; to encourage the publication of records of individual service of soldiers and patriots of the Republic; to promote the celebration of Texas Independence Day and San Jacinto Day; to secure and hallow historic spots by erecting monuments thereon; and to preserve the unity of Texas as achieved by the fathers and mothers of the Texas Revolution. The court held that this organization was properly incorporated within the meaning of the above quoted statute, saying:

> "The purpose of this coropration is clearly educational. * * * The sentiment of regard for the memory of those who gave their lives for the blessings of this great state stimulates patriotism and is in the highest sense education. The facts to be preserved furnish the means of the best education for the young men and women of this state. The purpose is laudable in its influence upon the present generation; it is laudable, educational and benevolent for the future citizens."

The syllabus of the same case declares:

"Education * * * includes not merely instruction in school or college, but also moral training, such as the stimulation of patriotism."

But not only does one arrive logically at the conclusion that The American Legion is a charitable organization because (1) it is dedicated to the promotion of the public good and (2) because its purposes are educational—two of the definitely recognized categories of legal charitable purposes—but the same conclusion is reached on the basis of numerous authorities which hold or declare expressly that patriotic societies are charitable organizations.

Thus, no less an authority than Cooley on Taxation (1924 edition), Section 759, declares:

"What are charitable institutions. * * * Charitable institutions or organizations, so as to be tax exempt, have been held to include * * * patriotic societies engaged in fostering love of country and respect for civil institutions."

To the same effect, see 26 Ruling Case Law 317, Section 278, which states:

"In short, a charity is a gift to promote the welfare of others, instances of which are * * * patriotic societies engaged in fostering the love of country and respect for our civil institutions."

Likewise, in an instructive annotation in 34 A. L. R. 634, at page 652, the following observation is made:

"In a number of cases it has been held that * * * patriotic societies were charitable institutions within the meaning of the tax exemption statutes."

In *Molly Varnum Chapter, D. A. R.* vs. *City of Lowell,* 204 Mass. 487, (1910), the question presented was whether the Molly Varnum Chapter of the D. A. R. was within the class of corporations described in the statute as "literary, benevolent, charitable and scientific" whose real property, when used and occupied for the purposes for which they were incorporated, was exempt from taxation. Said chapter had been incorporated under the Massachusetts laws:

" * * * for the purpose of perpetuating the memory of the men and women who achieved American independence, of acquiring and protecting historic spots, encouraging historical research and the publication of its results, preserving documents and relics and individual records of revolutionary soldiers and patriots and promoting the celebration of patriotic anniversaries, or cherishing, maintaining and extending the institutions of American freedom, and fostering true patriotism and love of country. Also for the purpose of holding real estate so far as may be necessary for its lawful ends."

In furtherance of these purposes said chapter had purchased with funds raised from dues assessed on its members and from voluntary contributions by citizens, an estate known as the "Spaulding House," formerly owned and occupied by soldiers who served in the Revolutionary War. This house was used for the following purposes: As a meeting place for the chapter where historical papers and essays were read at the meetings; as a free public exhibition hall; as a hall for lectures to the public upon historical, artistic and kindred subjects by eminent antiquarians, artists, etc., a fee being charged for admission to these lectures and the net proceeds used

to defray the expenses of maintaining the house (i. e. for repairs, heat, lighting and interest on mortgage); and as a place for entertainment, the house being let by the chapter from time to time for a stipulated fee to persons desiring to give entertainments there, the fees obtained this way being used to defray the expenses of the house. The only income received by the chapter was derived from membership dues and the use of the house. No part of the income was divided between the members. Under these facts the court held that this property was within the meaning of the tax exemption statute, saying: (pages 493-494)

> "The purposes described in plaintiff's charter are neither contrary to law nor opposed to morality. It has aided in the relief of the destitute, made gifts to the public schools, assisted in the establishment of a public library, and in the maintenance of a boy's club for industrial work and a sewing class for girls. The plaintiff has also contributed money for the promotion of historical research, the preservation of historical sites, and has inculcated patriotism by perpetuating the memory of the men and women who were instrumental in achieving our independence. If the means employed are somewhat diversified and elaborate, the ends served are wholly beneficial to the community. The diffusion of knowledge, the relief of the poor, the fostering of love of country and of respect for our civil institutions, all tend to raise the standard and improve the quality of citizenship, and not only relieve the burdens of government but advance the public good. Donohugh's Appeal, 86 Penn. St. 306. *Ould* vs. *Washington Hospital for Foundlings,* 95 U. S. 303, 311. The gratuitous benefit thus conferred serves only charitable purposes and entitles the plaintiff to statutory exemptions."

People vs. Thomas Walters Chapter, D. A. R., 311, Ill. 304 (1924) is an analogous case. Relevant to the purposes of the Thomas Walters Chapter of the D. A. R., the taxation of whose property was the subject of contention, the organization's charter made the following statement:

> "The object for which it is formed is to maintain a chapter house at Lewistown, Illinois, and in connection therewith a community rest room; to perpetuate the memory of men and women who have actively promoted and protected the interests of the community in the past, of those who have been prominent in the history of our county, state and country, and especially of those who achieved American Independence by the acquisition and protection of historical spots and the erection of memorials, and by the promotion of celebrations of patriotic anniversaries; to cherish, maintain and extend the institutions of American freedom and to foster true patriotism and love of country."

Said chapter owned a building near the center of town in which a rest room, open to the public, was established and provided with a public toilet, also with chairs and tables where people might rest and eat their lunches. Whenever the numbers were such as to require it, the entire building, with the exception of a part of the second floor, was open to the public. No part of the premises was leased or otherwise used with a view to profit, but two rooms were rented to lodgers, producing an income of one hundred and thirty-two dollars a year which was devoted to the purposes of the organization. The members paid annual dues, which were received by the state chapter, from which it furnished aid to schools. On occasions some of the rooms were rented to private organizations for entertainments. Tablets were

sold to perpetuate the memory of men and women who had been concerned in the building of the community. Other funds were secured by donations and by serving meals and banquets, and all revenues from any sales were devoted to paying for the property and to the purposes of the chapter. The Illinois Constitution provided that:

> " * * * such property as may be used exclusively for * * * charitable purposes, may be exempt from taxation by general law."

Under this authorization the Legislature had passed a statute providing that:

> "All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, * * * when such property is actually and exclusively used for such charitable beneficent purposes and not leased or otherwise used with a view to profit," shall be exempt from taxation.

The Illinois Supreme Court held that the property in question was exempt from taxation within the meaning of the constitutional and statutory provisions relating to tax exemption, saying:

> "The organization of the chapter and the uses to which its property was devoted were not only for the establishment and maintenance of a community rest room and improvement of social conditions, which were applied religion, but also to impress upon the people the value of our inheritance of freedom and reverence for those who achieved it, to maintain and perpetuate our established system of government which has fulfilled the purposes and expectations of its founders, and to discourage and prevent opposition to the government and its institutions by discontented venders of political nostrums for the cure of supposed evils existing only in perverted theories of government or due to thwarted personal ambitions. The objects of the organization and the uses of its property were a distinct contribution to public welfare, and the property has been devoted exclusively to such purposes and not leased or otherwise used for profit."

In *Carter* vs. *Whitcomb,* 74 N. H. 482, it was decided that the Woman's Relief Corps of Nashua, New Hampshire, an auxiliary of the Grand Army of the Republic, was not liable for inheritance taxes where statutory enactments provided:

> "All property within the jurisdiction of the state * * * which shall pass by will, or the laws regulating intestate succession * * * except * * * to or for the use of charitable, educational, or religious societies or institutions in this state the property of which is by law exempt from taxation * * * shall be subject to a tax * * * ."

and

> "So much of the real estate and personal property of charitable associations, corporations, and societies as is devoted exclusively to the uses and purposes of public charity" is "hereby exempted from taxation."

The court made the following observations:

> " As the Relief Corps is an association of women in Nashua, which presumably extends its benevolence to veterans and their families in the immediate locality, its formal allegiance to a national organization incorporated in another state is immaterial upon the question whether it is a charitable society within the meaning of the statute. Its character in that regard is not changed by the fact of its dependency upon some other organization. If its charity is administered for the benefit of the public within this jurisdiction, it falls within the class which the Legislature intended to favor and encourage."

In another case, the Supreme Court of New Hampshire held that a valid charity was created where a testator made a bequest to the town of Cornish, New Hampshire,

> " * * * for the purpose of perpetuating the 'United States flag', that the stars and stripes of which may remind the inhabitants of their bounden duty to themselves and their fellow citizens of the whole United States to so act in harmony with right and justice that no occasion will occur to disturb our peace and tranquillity in all coming time" and provided that the "income shall be invested yearly in 'United States flags' to be used within said town on all proper occasions."

Sargent vs. *Cornish,* 54 N. H. 19; Zollman on "American Law of Charities", Section 303, page 209. The court said, on page 23:

> "This purpose is certainly patriotic and good. The intention of the testator seems to have been to educate the rising generation of Cornish to patriotic impulses. The legal status of a charity is not determined by its practical results, which can seldom be foreseen, and this court cannot say, judicially, that the means adopted by the testator are not adapted to effect his patriotic purpose."

In the light of the numerous authorities just reviewed it is palpable that patriotic purposes and patriotic organizations are charitable in their nature. The soundness of this position is buttressed by authorities which declare that promotion of patriotism is a public purpose. Thus, in *Allied Architects Association* vs. *Payne,* 192 Calif. 431 (1923), the California Supreme Court stated at page 434:

> "It is settled beyond question that the promotion of patriotism, involving as it does the sense of self preservation, is not only a public purpose but the most elemental of public purposes."

See also Annotation, 30 A. L. R., 1035.

Having concluded that The American Legion is solely a charitable institution, that all property owned and used by it exclusively for its fundamental purposes is exempt from taxation and having examined the authorities which give substance to this conclusion, I shall proceed to consider the use being made of the property referred to in your communication. Upon this point your letter furnishes this information:

> "The application states that this park is used entirely for charitable purposes. It is equipped with play ground, camping facilities, rest room and is open to the general public free from any charge. The property has been dedi-

cated, with proper ceremonies, as a memorial to Union County Soldiers and Sailors."

Thus, it is to be observed that the property about which you inquire is dedicated as a memorial to soldiers and sailors of the county for free public park purposes.

Not only am I of the opinion that the use of property exclusively for free public park purposes to memorialize the soldiers and sailors of a county is exclusive use for fundamental Legion purposes which, as has already been declared, are solely charitable, but I opine that the exclusive use of property for free public park purposes, divorced from the ownership of any charitable organization is, of itself, purely charitable. Hence, for these two very strong reasons, this property is exempt from taxation if it is used exclusively for the purposes stated.

It is requisite that some definite expedients are indispensable to actuate the purposes for which any institution is organized. Mere objectives are not self-executory. They become consequential only as apt means are adopted to attain their consummation. Laws which provide for exemption of property which is used exclusively for charitable purposes contemplate property being used exclusively in order "to accomplish" charitable purposes. The very fact that means are necessary for the accomplishment of purposes furnishes reason to believe that the use of property as a means does not preclude the idea of its being used exclusively for charitable purposes within the meaning of the statute, else no property would be used exclusively for charitable purposes.

A good illustration is furnished by the case of *National Navy Club of New York* vs. *City of New York*, 203 N. Y. S., 114 (1923). The purposes of the litigious Navy Club as disclosed in its articles of incorporation were:

> " * * * to encourage social intercourse among enlisted men in active service in the United States Navy and Marine Corps, * * * ; to promote among them a spirit of patriotism and a regard for law and order; to improve conditions of those in the service and strengthen their morale; and to establish and maintain in the city of New York, for their use and accommodation, suitable quarters including reading and writing rooms, baths, canteens, lodgings, and such other facilities and such appurtenances and belongings as are usual in clubs and club houses established for the members or proprietors thereof and as may conduce to the good and general welfare of the United States in times of peace or war, in respect of its naval forces in all branches."

The Navy Club purchased quarters which may be described as being similar to those of the average Y. M. C. A. Charges were made for meals and beds but not enough to cover actual expenses. The balance was obtained from benefits, contributions and endowments. The question was whether this property was exempt from taxation under a statute providing:

> "The real property of a corporation or association organized exclusively for the moral and mental improvements of men and women, or for * * * charitable, benevolent * * * or * * * patriotic * * * purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes, * * * shall be exempt from taxation."

It was urged against exemption that the Navy Club was not organized exclusively for purposes within the contemplation of the statute, and that its realty was not used

exclusively for such purposes, counsel referring particularly to the provisions in the club's charter stating some of its objects as being "to encourage social intercourse among enlisted men, etc." and to maintain suitable quarters with such facilities as are usual in club houses. The court held the property exempt, saying:

> "Plaintiff is exclusively organized and conducted and exclusively operates the real estate referred to for the purpose of improving certain conditions affecting, from time to time, the rank and file of the men of our Navy, and thus, and fundamentally to strengthen their morale and promote among them a spirit of patriotism and regard for law and order. (p. 117)
>
> "The main and controlling objects of plaintiff's existence and organization are none the less exclusive, in the statutory sense, because they can only be accomplished by subsidiary activities, such as providing quarters for men during their usually brief periods on shore. * * * It is true that plaintiff's charter refers to other objects, but clearly they are merely the means or methods of carrying out the ultimate purpose of its existence. Strictly speaking, it would not be necessary to disclose such subsidiary functions in the certificate of incorporation. Mention of them is a precautionary measure, taken by a careful lawyer, that the accomplishment of the purposes for which plaintiff is organized, maintained and conducted may not be hindered by any question as to the right to undertake subsidiary activities necessary to the accomplishment of its true ends. (p. 118)
>
> "Plaintiff's charter authorizes it to employ means and methods of carrying out its main object, not because they are additional to the main purpose, but because they are, as means and methods, necessary for its accomplishment. Their statement is merely descriptive of the main purpose. They do not change the ultimate object, the one exclusive object for which the plaintiff exists, but rarely pave the way for carrying it on. (p. 114)
>
> " * * * The place, the entertainment and all the accommodations provided are the means to the end, the benevolent and patriotic service plaintiff is rendering. * * * ." (p. 118)

Having in mind the difference between means and objectives, ultimate purposes and subsidiary activities, I am of opinion that the establishment and maintenance of a free public memorial park by a post of The American Legion is a use of property as a proper means of accomplishing its charitable purposes. The establishment of memorials to statesmen and soldiers has long been regarded as a means highly conducive to the incitement of patriotic sentiments (a cardinal Legion purpose), and their erection has been deemed to so subserve public purposes as to justify the expenditure of public money. These memorials have frequently been embodied in statues and great halls and buildings. In *Allied Architects Association* vs. *Payne, supra,* the court said:

> "It is settled beyond question that the promotion of patriotism, involving as it does the sense of self preservation, is not only a public purpose but the most elemental of public purposes. * * * The continuity of our governmental institutions is dependent in a large measure upon the perpetuation of a patriotic impulse which is but the willingness to sacrifice all for the ideas and ideals which form the foundation stones of our republic. It will not be gainsaid that patriotism is promoted by the erection of a memorial monument, be it a granite shaft or building, symbolic of the soldiers' spirit of sacri-

fice, conceived and consummated in recognition of his deeds of heroic daring, and perpetuating in grateful remembrance those who dedicated their lives to the service of their country. Such a monument brings visibly and effectually before the minds of the present and future generations the sacrifices of the past. It is conceded, as indeed it must be, that the erection of a building as a memorial hall, to the extent that it would serve as a stimulus to patriotism, would be for a public purpose." (p. 434.)

In the case of *Dexter* vs. *Raine*, 18 Bull. 61, the Superior Court of Cincinnati held that a statute entitled "An act to erect a monument in commemoration of the public services of William Henry Harrison" was constitutional, saying:

"We are of opinion that the purpose for which the tax under the act is to be levied, is a public purpose. The erection of a monument in honor of a man who has rendered valuable services to his country is an enduring acknowledgment of the country's gratitude which will be a strong incentive to patriotic service by other citizens."

The judgment in this case was affirmed by the Ohio Supreme Court, (18 Bull. 301).

The case of Smith's estate, 5 Pa. Dist. Rep. 327, (affirmed in 181 Pa. 109) weighs directly on this point. Here a testator made a gift in trust for the purposes of erecting in Fairmount Park, Philadelphia (1) a monumental memorial bearing the statuary figures of the testator and of a number of famous military officers and statesmen of Pennsylvania of Civil War days, and (2) a building enclosing a children's play ground. One of testator's relatives raised the objection that the gift for this monument was not a charity, and therefore that the bequest to keep the same in repair was void as being violative of the rule against perpetuities. But the court said:

"The whole current of authorities, remote as well as recent, approve and sustain such a disposition of his estate as directed by Mr. Smith, and settle the same to be, beyond all dispute a charitable use. It is true the gift does not provide for the hungry, naked, sick or homeless, nor for the scholastic or scientific education of the general public, but with an equally exalted benevolence and love for mankind, has in view, by the foundation of an almost imperishable magnificent memorial, far excelling in beauty any creation of the sculptors' art heretofore erected within the limits of the park, the pleasure resort of hundreds of thousands of our population, which for generations yet unborn will tend to the elevation and refinement of the people, cultivate a love for the beautiful in art and architecture, and keep alive their patriotism and remembrance of the martial prowess and good deeds in statesmanship and civil life, of heroes, patriots and citizens worthy of perpetuation. And not only this, but furnishes a secure place for the comfort and gratuitous healthful amusement and recreation of young children, amid pure and attractive rural surroundings, removed from the dangers of the streets, and contaminated atmosphere of a great city. We cannot conceive of any more strictly charitable use within its legal definition than the purposes and objects contemplated by the testator."

To the same effect, see Zollman on "American Law of Charities", Section 322, p. 216.

However well statues and buildings may be suited to use as memorials for the inculcation of patriotism, they do not have, in the nature of things, any monopolistic

dominance in this quality. Parks are also well adapted for the same use. Numerous varieties of adaptation readily suggest themselves. Such a park as the one in question is peculiarly suited to the erection of a flagpole where at midday countrymen may be inspired to fidelity at the sight of the waving ensign flourishing against the heavens, or at morning and evening, by impressive ceremonies attending its raising and lowering. Over the grounds of such a park may be erected tableaux, statuary and buildings, bearing fitting epigraphs and commemorating men and events whose very recollection moves every patriot to increased devotion. Here also, the placement of cannon and shells, the stacking of rifles, the planting of flower beds of appropriate design, the establishment of museums containing flags and relics of combat, the holding of sham battles, the blasting of the bugle, the playing of national anthems and the observance of significant occasions with celebration, make a project like this potentially of incalculable worth for educating the citizenry and eliciting patriotism in multifarious ways. Nor can it be denied that the mere establishment of such a park, specifically dedicated to the memory of those who have borne arms, and maintained by those who last took to the battlefield in defense of the nation, has a magnitudinous, stimulative influence upon the patriotism of all who may go there.

The mere fact that such a spot is rendered more attractive as a Mecca in that it offers a place for an outing is only a fortunate boon. This feature serves merely as an efficient medium in aiding to bring people to a place where they may be brought under the spell of patriotism in the various ways I have elucidated. In *National Navy Club* vs. *City of New York,* supra, the court, in referring to the use of quarters in the nature of a club house for enlisted men of the Navy and Marines, said:

> "It is necessary to have a place to which the men will be attracted."

See also, Zollman on "American Law of Charities," Section 304.

Besides, there can be little doubt upon the proposition that the use of the property here in question for the purposes stated is a use for the purpose of public charity, and that for such reason alone this property is exempt from taxation if it is so used exclusively. It has always been held that a gift of land for public park or play ground purposes is a public charity. In re Bartlett, 163 Mass 509; *Richardson* vs. *Essex Institute,* 208 Mass. 311; *Williams* vs. *Oconomowoc,* 167 Wis. 281; in re Smith's estate, supra. See also: Annotation, 34 A. L. R. 634, at page 673; and Zollmann on "American Law of Charities," Sections 304, 321 and 322.

In *Cincinnati Gymnasium and Athletic Club* vs. *Edmonson,* 13 N. P. N. S. 489, the court decided that property of a gymnasium and athletic club devoted to the use of the public for athletic and gymnastic purposes was property used for the purpose of public charity within the meaning of the provisions of Section 5353, General Code, as they then read. The court said that where property is used for purely public charity, the form, kind or character of the organization controlling it is without importance and can in no way affect the question of its taxability. The rule here stated is equally true under the above quoted provisions of the Constitution and of Section 5353, General Code, applicable in the determination of the question here presented.

The fact that legal title to this property is in trustees for a post of The American Legion is immaterial. The essential thing is that the legal title is held for the Legion (a post being a component part of the Legion) for the purposes indicated. In *Jones* vs. *Conn,* 116 O. S. 1, 8-9, the court said:

> "It is generally held that the organization of a trust to execute a charitable purpose constitutes a charitable institution."

To same effect, that the trust arrangement is immaterial, are: *Humphries* vs. *Little Sisters of the Poor,* 29 O. S. 201, 206-207; citing *Gerke* vs. *Purcell,* 25 O. S. 229; 1928 O. A. G. 1705; and *Litz* vs. *Johnston,* 65 N. J. L. 169.

I shall now address myself to a consideration of the important phrase *"used exclusively for charitable purposes."* This term is found frequently in constitutional and statutory provisions relating to tax exemption, and has been the subject of not infrequent construction by courts.

Obviously the use of the word "exclusively" circumscribes narrowly the category of property which is exempted. Thus, Zollman says in his treatise on the American Law of Charities, page 473, Section 706:

> "Used or Occupied or Exclusively Used or Occupied. The word 'used' plainly makes the use of the property, not its ownership, the criterion. The use of the word 'exclusive' in connection with it, of course, is not unimportant. Property or a building might actually be used for school purposes, and yet not be used exclusively * * * . In every case it is the use, not the title, which is decisive. The mere ownership of land by a charitable institution will, therefore, not exempt it. The exemption depends upon its actual devotion to the work of the institution."

Similarly, the Supreme Court of Ohio said in *Jones, Treasurer,* vs. *Conn,* 116 O. S. 1, at page 10:

> "Furthermore, when the amendment employed the word 'exclusively,' it placed as narrow construction upon the meaning of the clause as was possible; for * * * 'Property or buildings might actually be used for charitable purposes and yet not be used exclusively.'"

However, the Supreme Court by its pronouncement, did not say, nor did it mean, nor did the Constitution contemplate that the most rigorous and inexorable exactitude of literal construction possible must be used here. If that were true then no property in the State would ever be exempt from taxation, for in the most rigid, precise, absolute sense no property is used exclusively for no other than charitable purposes. And certainly, to the framers of the Constitution cannot be imputed the bootless position of enacting fundamental law in reference to a situation which is only theoretical and non-existent. Here, the rule of common sense, already alluded to, must be applied.

Very sagaciously, the authorities, in dealing with the phrase "used exclusively for charitable purposes," have drawn a line of demarcation between uses for a dominant purpose and uses which are only incidental or sporadic in their nature. Zollmann's American Law of Charities states, Section 719:

> "Used or Exclusively Used. Incidental Use for other Purposes. We have seen that the fact that a charity has employees who do their work without any charitable motive, or that it receives compensation in money or work from some of its beneficiaries, does not affect its character. The same is true where some other purely incidental use is made of its facilities. A distinction must be made between the primary and the secondary use of its property, between the dominant purpose and its incidents. If the latter do not interrupt the exclusive occupation of the building for the charitable purposes, but dovetail into them, or round them out, an exclusive use remains. Says the Georgia court: Property used for raising income is not exempt although the income may be used for charitable purposes; but property used for charitable purposes is not taxable, although, in the operation of the

charity, incidental income may be derived.' Many things depend upon who is doing them and the purpose for which they are done. 'When a religious organization serves a meal or lap supper in the basement of its church, and charges for it, even for the purposes of raising money to meet a deficiency in connection with its church matters, or to be used in religious work, no authority has ever held that for that reason the church building was not used solely and exclusively for religious worship."

Illinois, whose provisions for the exemption from taxation of property used exclusively for charitable purposes is practically identical to ours, has had several illuminative remarks on this topic by its Supreme Court. In *People* vs. *Withers Home,* 312 Ill. 136 (1924), the court said at page 139:

"It is the *primary use* to which the property is put which determines the question whether it is exempt from taxation. If it is devoted primarily to the religious or charitable purposes which exempt from taxation, an *incidental use* for another purpose will not destroy the exemption."

Again, in *People* vs. *Muldoon,* 306 Ill. 234, 238, the court stated:

"In determining whether property falls within the terms of the exemption, the primary use will control and not a secondary or incidental use. * * * The primary use of a school house is for education, and an occasional use for a lecture or social affair will not destroy the exemption. Primary use of a church building is public worship, and its occasional use for some other purpose or a minor use for social functions will not render it liable to taxation."

However, the authorities, both in Ohio and throughout the country, are unanimous in holding that the requirement that property in order to be immune, must be "used exclusively for charitable purposes," precludes the exemption of realty owned by a charitable organization which is leased with a view of making profit even though the proceeds are devoted exclusively to charitable purposes. *Rose Institute* vs. *Myers,* 92 O. S. 252. Thus, as is appropriately said by the Ohio Supreme Court in the case just cited, (pages 264-265):

"It is the use of the property which renders it exempt or non-exempt, not the use of the income derived from it. *Cincinnati College* vs. *State,* 19 Ohio 110; *Library* vs. *Pelten,* 36 O. S. 258; *New Orleans* vs. *St. Patrick's Hall,* 28 La. An. 212; *Detroit* vs. *Mayor,* 3 Mich. 172; *State* vs. *Elizabeth,* 4 Dutcher."

Again, in *Jones* vs. *Conn,* 116 O. S., 1, it is stated:

"Under such a constitutional provision as ours, adopted in 1912, there is no question as to the taxability of real estate leased for a profit, regardless of the use to which the income therefrom is put." (Page 10).

And Zollmann on "American Law of Charities" declares, Section 723:

"Property which is not used directly for the purposes and in the operation of the charity, but for profit, is not exempt, and the devotion of the profits to its support will not alter this result * * . The direct and im-

mediate use of the property itself is meant, and not the remote and consequential benefit derived from its use."

No other conclusion could be logically reached. Such property is not being used exclusively for charitable purposes. In fact its direct use may be any other in the world than charitable. For other reasons leading to this conclusion, see Zollmann on "American Law of Charities," Sections 708, 709, 710 and 791. Other authorities on the same subject are: Annotation, 34 A. L. R. 634, on pages 635 and 659; Cooley on Taxation, Section 741.

However, a distinction is made between renting realty with a view to commercial profit, and an occasional temporary letting for the purpose of holding meetings, entertainments and the like, not with a view to commercial profit, but only with a view of helping to meet the expenses of maintenance and upkeep of property. The latter use does not render property otherwise devoted exclusively to use for charitable purposes, subject to taxation. *People* vs. *Thomas Walters Chapter, D. A. R.,* supra. See also *Molly Varnum Chapter, D. A. R.,* vs. *City of Lowell,* supra; *Newton Center Woman's Club* vs. *City of Newton,* 154 N. E. (Mass.) 846; *Scranton City Guard Association* vs. *Scranton,* 1 Pa. Co. Ct. 550. In *Cincinnati Gymnasium & Athletic Club* vs. *Edmondson,* supra, a similar conclusion was reached under the then existing forms of Article XII, Section 2 of the Constitution and Section 5353, General Code. The Constitutional provision then provided:

"* * * institutions of purely public charity * * * may by general laws be exempt from taxation."

And Section 5353, General Code, provided:

"* * * property belonging to institutions of public charity only shall be exempt from taxation."

The Court said (pages 492-493):

"A small charge is made for the use of billiard tables, but only sufficient to maintain them. Certain athletic goods are sold to members at a price only to cover the cost and chiefly sold by the institution to insure uniformity in kind among its members. Exhibitions are held at which a charge of admission is made, but only to cover the necessary expenses. The athletic grounds are occasionally rented to encourage culture of the body in the vicinity, and the rental is only nominal to cover expenses in keep of grounds, with no view to profit. The court has held that the purpose of the institution is purely public charity and the court must hold from the evidence that the property in question has been used for a purely public charity. This property is neither held nor used for the purpose of profit."

It is also the rule in Ohio, and in other states as well, that land or buildings owned by a charitable institution which is vacant and not used for any purpose, is subject to taxation. This is true even though the charitable institution intends to use the property in the future. *Y. W. C. A.* vs. *Spencer,* 9 C. C. N. S. 351; *Matlack* vs. *Jones,* 2 Disney 2; 26 R. C. L. 327; Annotation, 34 A. L. R. 634, 668-669; Annotation 2 A. L. R. 545; Zollmann on "American Law of Charities," Sections 739, 740 and 743. The Constitution and statute predicate exemption upon actual, present use of property for charitable purposes. Manifestly, property which is not being used for any purpose cannot be said to be used for charitable purposes, and does not bring

itself within the letter, spirit or justification of the provisions granting tax exemption. Such property may never be used for charitable purposes.

The effect of time as an element is properly stated in Zollmann on "American Law of Charities," Section 722:

> "Occasionally, a charitable organization uses its property only a few days in the year. This fact, by itself, will not deprive it of its exemption, as the character, not the amount of use, is the decisive element."

Then the author makes this admonition:

> "Under such circumstances, however, the inducement to rent such property for commercial purposes is very great indeed. The result cannot be in doubt. A park or structure used for the direct purposes of the organization only a few days in the year, and subject to rent at all other times, becomes primarily a commercial adventure, and its use for charitable purposes becomes incidental."

One of the most general purposes for which a Legion post no doubt uses its property is as a headquarters where its meetings are held and from which its activities are executed. Property so exclusively used, is, I believe, exempt from taxation under Article XII, Section 2 of the Constitution and Section 5353, General Code.

In making this decision, I am not unaware of the case of *Wilson* vs. *Licking Aerie,* etc., 104 O. S. 137; but a consideration of that case discloses that its facts are so patently distinguishable from the facts now being considered that a different conclusion is warranted. The problem there presented was whether The Licking Aerie of The Fraternal Order of Eagles, a corporation not for profit organized under Ohio laws, and conceded to be "a purely secret benevolent organization maintaining a lodge system" was subject to taxation for a certain piece of property which was used "for club room and lodge room purposes and social gatherings of the members." The building contained recreation and reading rooms and pool tables. In it banquets and entertainments were held for members, their families and friends. The Supreme Court held that this property was subject to taxation, saying:

> " * * * it cannot be said that the defendant in error (and the real estate described in the petition) is an 'institution used exclusively for charitable purposes.' It would not be competent for the legislature to enact a statute exempting the property of the organization from taxation unless it was shown to be an institution used exclusively for charitable purposes." (Page 146.)

One notices at once a vast difference between the Licking Aerie case and our situation. The petition in the former states that the Licking Aerie is a purely secret benevolent organization maintaining a lodge system. Furthermore, it is significant that an examination of the charter of the Licking Aerie, on file in the office of the Secretary of State, reveals that, unlike The American Legion, it is not solely a charitable organization, but that it is equally dominantly a social organization. Social enjoyment is not auxiliary and subordinate to, but coordinate with, its benevolent purposes. Thus the purpose clause of the organization declares verbatim:

> "Said corporation is formed for the purpose of uniting fraternally and for mutual benefit, protection, improvement and association generally, male members of the Caucasian race, who believe in a Supreme Being and who are of sound body and health, not less than twenty-one (21) years and not more

> than fifty years of age subject to the constitution and laws of The Grand Aerie of The Fraternal Order of Eagles."

Hence, use of the property by the Licking Aerie Lodge in the manner stated was not use exclusively for charitable purposes, but rather, it was use for social purposes, one of the main purposes of the organization. It was a dominant, non-charitable use.

It is well recognized that one of the main functions which a lodge serves is that of a social medium. In Bacon on "Life and Accident Insurance Including Benefit Societies And Voluntary Associations" (1917 Edition) the author says in discussing the nature of fraternal beneficiary societies:

> "Section 11. They are Social Clubs—They are, in the first place, social organizations, or clubs of congenial associates, bound together by secret obligations, mystic signs and fraternal pledges. They have generally initiatory rites and ceremonials and a more or less elaborate ritual."

The same treatise elaborates upon the nature of the secret fraternities, saying:

> "Section 21. The Secret Fraternities—Closely allied to the beneficiary or mutual aid life insurance organizations, are the secret ritualistic societies and charitable fraternities, whose characteristic features are good-fellowship, social enjoyment and benevolence. The Freemasons, Odd Fellows and Knights of Pythias are examples. These numerous societies are secret in their organization and work, use a ritual and have initiatory ceremonies and their members are pledged to secrecy. They are organized on the plan of local assemblies or lodges under the government and control of grand or supreme lodges."

In 26 R. C. L. 319, it is stated:

> "A building used as the headquarters of a lodge of a fraternal order of a charitable character is not exempt if one of the dominant uses of the building is for social enjoyment of the members, since such a building in its legal aspect is no different from the clubhouse of an ordinary social club."

Cooley, in his work on Taxation, Section 741, allocates the Licking Aerie case to its proper sphere, citing it for the following proposition:

> "If the power of the Legislature to exempt is limited to 'institutions used exclusively for charitable purposes' it cannot exempt the property of a secret association whose funds are devoted not only to benefits to the members but also to social purposes."

Lodges play a large and commendable part in American life. Their many deeds of beneficence merit the most grateful approbation we can give; and the fidelity of their patriotism is unsurpassed. However, being organizations which are created for other purposes as well as charitable ones, the courts of the State have not seen fit under the provisions of the Constitution, to exempt from taxation lodge property devoted to the other, but non-charitable, fraternal purpose—the promotion of social enjoyment and good fellowship.

How altogether different are the structure and pursuits of The American Legion. It is not a secret society, but one whose membership is based alone upon the most

exalted public service and self-abnegation that a compatriot can ever perform; not a group organized essentially for the benefit of its own members only, but one holding at heart the welfare of the entire nation; not an organization brought together with social enjoyment as a predominant incentive, but one summoned by but one motivation —the development of a patriotism that is vital, living and real. It cannot be doubted that the service which the Legionaries rendered and the purposes for which they sought organization, set The American Legion apart in a distinct category of its own, different from all other organizations with the exception of the few, such as the Grand Army of the Republic, which were cast in the same distinctive mould. In a sense, it is an organization which the entire country feels, as it does toward only a few similar organizations, is its own. Few other organizations so represent or stand for the Nation itself; and no one would seek to minimize or share the unique station which only unique service has won. In the activities of the Legionaries now, as in the more sombre days of 1917-1918, the whole nation has a concern. Their pursuits are animated with a national interest. With the Legion, social activities are not a predominant or even a coordinate feature. They are only incidental to its main purpose. And even they are not without patriotic moment, for the mere assemblage or meeting together of veterans enshrouds itself with a singular atmosphere which is hardly characteristic of that of any other organization. Their very coming together serves to generate and disseminate patriotism. Thus, as is stated in *Allied Architects Association* vs. *Payne, supra:*

> " * * * its occupancy and use as a meeting place for those who honorably served their country in her time of need must necessarily increase the extent of the utility of the building as a means for the promotion and promulgation of patriotic principles and practices." (p. 434).

And, at page 436, it is said:

> "It is to be noted that the building is devoted to and to be used as a 'meeting place' for the use of associations of veterans. The Legislature undoubtedly had in mind that it was by the meeting together, the gathering, the coming together, and congregating of the veterans that the patriotic impulse would by that contact be revivified and radiated to the people at large." (p. 436).

In view of the above considerations, I am of the opinion that property used exclusively as a headquarters and meeting place of The American Legion and from which its activities are projected, is exempt from taxation even though it is used for the incidental purpose of social enjoyment. This conclusion is justified by the same principle which characterizes as different other activities by or in behalf of veterans and soldiers, when the same things done by or in behalf of other classes of civilians would not be upheld. A more public character attaches to acts done by or in behalf of veterans and soldiers. I refer to provisions in the laws of various states providing for payment of bonus, relief, pensions, educational assistance, preferential appointments, welfare acts, establishment of soldiers' homes, exemption from license, property and poll taxes, etc.

The letter of Prosecuting Attorney Williams states that some of the property about which he inquires is personal property. In general, it may be said that the same rules are applied to personal property as are applicable to realty. Thus, it is stated in the syllabus of *Jones, Treasurer,* vs. *Conn,* 116 O. S., 1:

> "Under Section 2 of Article XII of the Constitution of Ohio, in its present

form, the personal property of an institution of public charity is exempt from taxation only when used exclusively for charitable purposes."

However, as is disclosed by this case, some doubt exists as to whether endowment funds of charitable institutions are taxable or exempt under Section 5353, General Code. But inasmuch as it is unlikely that endowment funds comprise part of the property of The American Legion, I shall reserve my opinion on that question until a specific inquiry on that point arises.

It does not appear that any of the property in question is a township memorial building and as such, exempted from taxation under Section 3410-6, General Code. Neither is it disclosed by any of the facts that any of this property is owned and held by an association or corporation organized or incorporated under the laws of this State relating to soldiers' memorial associations within the meaning of Section 5362, General Code, which provides that real estate held or occupied by such an association or corporation which is necessary and proper to carry out the object intended by such association or corporation shall be exempt from taxation.

In view of the foregoing considerations, and specifically answering the questions involved in the two letters above set forth, I am of opinion that:

1. The American Legion is purely a patriotic, educational and charitable institution, and all property owned and used by it exclusively for its fundamental purposes, is exempt from taxation.

2. Property, the title of which is in the name of park trustees for a post of The American Legion, which has been dedicated as a memorial to the soldiers and sailors of the county, and devoted exclusively to the free use of the public for park, playground and recreational purposes, as seems to be the situation here, is exempt from taxation as property used exclusively for charitable purposes under the provisions of Section 5353, General Code.

3. In construing the phrase "used exclusively for charitable purposes" a common sense demarcation is to be made between uses for a dominant purpose and uses which are only incidental or sporadic in their nature. An incidental use or an occasional isolated use for a purpose which is not strictly charitable does not destroy the right of exemption.

4. Realty owned by The American Legion which is leased with a view of commercial profit, is subject to taxation even though the proceeds are devoted exclusively to charitable purposes; however, an occasional temporary letting for the purpose of holding meetings, entertainments and the like, not with a view to commercial profit, but only with a view of helping to meet the expenses of maintenance and upkeep of the property, does not destroy the right to exemption.

5. Land or buildings owned by The American Legion, which is vacant and not used for any purpose, is subject to taxation, even though the Legion intends to use such property for its purpose sometime in the future.

6. Property owned by The American Legion and used exclusively by it as its headquarters and meeting place and from which its activities are projected, is exempt from taxation even though it is used for the incidental purpose of social enjoyment.

7. In general, the same rules are applied to personal property as are applicable to realty, in determining whether or not it is subject to taxation.

Respectfully,
GILBERT BETTMAN,
Attorney General.