

2925.

TAXES AND TAXATION—WHEN ORPHANAGE IS EXEMPT FROM TAXATION—INSTITUTION NOT FOR PROFIT AND OPEN TO ALL SIMILARLY SITUATED ON EQUAL TERMS WITHOUT RESPECT TO RELIGIOUS AFFILIATIONS—PROPERTY OF SISTERS OF PRECIOUS BLOOD AT MINSTER, OHIO.

An orphanage and girls' school, conducted by a religious organization under the auspices of a church, is exempt from taxation if the institution is not managed and conducted for profit, and is open to all persons similarly situated on equal terms without respect to religious affiliations. The exemption extends to all lands and buildings directly connected with such orphanage.

COLUMBUS, OHIO, March 10, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of February 27th, supplementing a former letter wherein the commission asks to be advised whether certain property belonging to a corporation known as the president and board of trustees of the Sisters of the Precious Blood, with headquarters at Maria Stein, Ohio, is exempt from taxation.

The general principles governing questions of this sort have been dealt with in a recent opinion of this department dealing with the effect of the recent decision of the supreme court in *Wilson vs. Licking Aerie of Eagles*.

The property in question is located at Minster, Ohio, and consists of 24 lots in that village, on which are located buildings, a garden, a small farm and an orchard. The principal building contains a chapel and the remainder is devoted to quarters in which are housed 24 orphans and 22 young girls. All these children receive some instruction at this institution,—a majority of them receive all of their instruction there. The institution is administered by sisters belonging to the Sisters of the Precious Blood, which seems to be an organization conducting similar enterprises at other places; but this particular enterprise is separately administered.

It further appears from the papers submitted that the sisters who administer the work serve without remuneration.

The income of the property and institution is derived from the following sources: The proceeds of the farm, orchard and garden so far as not used in the institution itself; a certain amount paid in by and on behalf of some of the inmates who are able to pay (14 pay nothing at all, and others vary in amounts based upon their circumstances), and a very considerable amount which is contributed by the general treasury of the organization, which treasury is (presumably) the product of voluntary contributions. The amount of such contribution of the general treasury for the year 1920 was substantially two-fifths of the total income of the enterprise.

It further appears that the institution which is known as "St. Mary's Institute," is open to orphans and girls of small means without regard to religious affiliation and on equal terms, though it is admitted that the primary purpose of the institute is the nurture and care of Catholic children. A list of graduates of the school is furnished, of whom there are a few non-Catholics.

Assuming that the home or school is in fact open to all orphans and young girls who can be accommodated therein, on the same terms without discrimination on account of religious affiliations, though perhaps with some preference to Catholics, it is believed that the property is exempt from taxation.

In the first place, the institute is "an institution." It is a permanently established enterprise, managed and conducted under a definite organization. It is operated without a view to profit, and indeed, is indirectly the recipient of charitable benefactions. Its purpose—that of the care and education of orphans and young girls of small means—is unquestionably charitable, and the assumption above made would make it public.

The exemption would extend to the buildings directly used for the purpose of the institute and to the immediately surrounding land. It would also unquestionably extend to the garden. The facts stated are perhaps not quite conclusive as to the uses to which the farm and orchard are put, but it seems that no distinct use of this part of the land with a view to profit is being made, i. e., that the tract though consisting of a number of town lots, is really managed and conducted as an entirety, just as the farm ordinarily found in connection with a county children's home would be conducted. Certainly, there is no showing that any part of this land is leased to and directly managed by any person or persons other than the sisters who conduct the home.

While further inquiry might therefore be advisable, the facts stated in the papers submitted with the commission's communication seem to show that the property should be exempted from taxation.

The papers are returned herewith.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2926.

INTOXICATING LIQUORS—DUTY OF COUNTY AUDITOR TO IMPOSE ASSESSMENT AND PENALTY UPON REAL ESTATE FOR TRAFFICKING IN ABOVE BUSINESS—WHERE ONE IS CONVICTED OF "KEEPING A PLACE" IN VIOLATION OF SECTION 13195 G. C. PASSED UPON—DUTY OF COUNTY AUDITOR UNDER SECTION 6085 G. C.—WHETHER OR NOT MILLER BILL (109 O. L. 4) APPLICABLE.

1. *It is the duty of the county auditor, under the provisions of section 6071 G. C. and its related sections, to impose an assessment of one thousand dollars and the twenty per cent penalty upon real estate whereon a business of trafficking in intoxicating liquor is carried on. Such a duty is cast upon the auditor irrespective of whether or not action has been taken by the prohibition commissioner and auditor of state. Where one is convicted of "keeping a place" in violation of section 13195, this is conclusive as to such person having been engaged in trafficking in such business.*

2. *It is the duty of the auditor to be vigilant in this matter to the end that taxes due the state may be collected. However, under section 6085 G. C., he is re-*