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MUNICIPALITY—PROPERTY OWNED BY A MUNICIPALITY BUT SITUATED WITHOUT THE CORPORATE LIMITS AND USED EXCLUSIVELY FOR PUBLIC PURPOSES IS EXEMPT FROM TAXATION.

SYLLABUS:

Real property owned by a municipal corporation and situated outside of its own corporate limits and within the limits of a township and a township rural school district and used exclusively for public purposes, is exempt from taxation, and may not be made the subject of taxation by the township or school district officers.

COLUMBUS, OHIO, March 19, 1927.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"The auditor of Montgomery county, Ohio, has submitted to this office a letter, a copy of which is attached hereto, and upon which I request your opinion.

His letter will give you the facts. His question is as to whether or not real property located in a township owned by the city of Dayton and not being annexed to the city can be taxed by the township authorities for purposes of township government.

I am submitting the question for the reason that with the growth of cities throughout the state, the broad power under Home Rule, and the increasing tendency of later years to assume authority in projects considered as and for the benefit, health and welfare of the municipalities which had not been heretofore so considered, it is a question which may be of more than local interest.

Without entering into a discussion as to whether or not the different projects as enumerated in the letter of the auditor are governmental, legislative or public functions, or are the exercise of proprietary rights. See: *Cincinnati vs. Hynicka*, 9 N. P. (N. S.) 273 (affirmed, 84 O. S., 446); *Railway vs. Roth*, 13 N. P. (N. S.) 633 (reversed, 2 App. 195); *Cincinnati vs. Lewis*, 66 O. S. 49. A consideration of section 2 of Article XII of the Ohio Constitution, sections 5328 and 5349 to 5363 of the Ohio General Code and the case of *Toledo vs. Hosler*, 54 O. S. 419, it would appear that there is no right to tax such property.

However, the continued extension of the power of the municipality may menace the existence of the township, as is shown in the letter of the auditor in the case of Jefferson township where the tax valuation of the property owned by the city and federal government is more than half of the entire tax valuation of the township.

What is to prevent a municipality from acquiring practically an entire township by purchase, without annexation and to the extent that the taxable property in the township would not produce sufficient revenue to maintain the township government.

Although the letter of the auditor does not mention it, another question is presented.

It appears that on some of this property, especially in Jefferson township, the city of Dayton has the right to acquire houses which are used as residences for employes of the city in the several projects mentioned. There

are a number of children who attend the township rural school and for which the rural school district must provide increased facilities. These people are technically residents of the rural district although living on city owned property. Apparently the rural school district is not entitled to collect tuition. We again have the question that the property on which they live is not paying a school tax. Unless the property owned by the city can be taxed it throws the burden of the increased school tax on the remaining property in the rural school district.

Can the property owned by the city of Dayton located within the rural school district be taxed for school purposes, or can tuition be collected for such children?"

Section 2 of Article XII of the Ohio Constitution provides:

"Laws shall be passed, taxing by uniform rule * * * all real and personal property according to its true value in money * * *; but * * * public property used exclusively for any public purpose, * * * may, by general laws, be exempted from taxation."

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 belonging to individuals or corporations, * * * shall be subject to taxation, except only such property as may be expressly exempted therefrom."

Section 5351 of the General Code provides that:

"Real or personal property belonging exclusively to the State or United States, and public property used for a public purpose, shall be exempt from taxation."

In 37 Cyc., 874-875, it is stated that:

"While in the absence of constitutional prohibition a state may tax the property of its municipal corporations, or a municipality having general powers of taxation may tax its own property, an intention to tax such property of a municipality as is devoted to public or governmental purposes will not be implied, but on the contrary such property will be held to be exempt unless an intention to include it is clearly manifested. Lands, buildings and other property owned by municipal corporations and appropriated to public uses are but the means and instrumentalities used for governmental purposes, and consequently they are exempt from taxation, either by express constitutional or statutory provision or else by necessary implication. This rule applies not only to counties and incorporated cities, incorporated towns, and incorporated villages, but also to such strictly public and governmental bodies as sanitary or levee districts, directors of the poor, and reclamation districts."

And on page 876 said exemption is extended to all such property as is used solely for legitimate municipal purposes. And at page 877 it is stated:

"There is no implied exemption from taxation of property owned by a municipal corporation, but which is not devoted to public or governmental uses, but held by the municipality in its private or commercial capacity and

as a source of profit or to serve some mere convenience of the citizens. So in the absence of an express exemption land of a city or other municipal corporation which is rented out to private parties and from which it derives a revenue is subject to taxation; * * * If property is used both for public and private purposes and the parts so used cannot be separated, the whole is subject to taxation."

In *City of Cincinnati vs. Lewis, Auditor*, 66 Ohio St., at page 55, it was held:

"The policy of this state has its foundation in section 2 of article 12 of the constitution which describes the property which shall be taxed as well as that which may, by general laws, be exempted from taxation: 'Laws shall be passed, taxing by uniform rule * * * all real estate and personal property; but * * * public property used exclusively for any public purpose, * * * may, by general laws, be exempted from taxation.' That the public ownership of property was not alone thought sufficient to exempt it from taxation is made obvious by the requirement that an exclusive use for a public purpose shall coincide with such ownership."

In *Trustees of Cincinnati Southern Railway vs. Roth*, 2 Ohio App., 195, at page 200, it is stated:

"In pursuance of the authority contained in Article XII, section 2, general laws have been passed exempting from taxation the different classes of property enumerated in said section. Such exemptions are set out in the General Code sections 5349 to 5363, inclusive."

Section 5356 exempts from taxation "public squares or other public grounds of a city, village or township, houses or halls used exclusively for public purposes or erected by taxation for such purpose, notwithstanding that parts thereof may be lawfully leased, and property belonging to park districts created pursuant to the provisions of sections 2976-1, et seq., of the General Code."

In the said case of *City of Cincinnati vs. Lewis, Auditor*, supra, the property under consideration for exemption was a farm which had been purchased by the city for the purpose of locating thereon a reservoir and using it in connection with the city water-works. This plan was abandoned and other lands acquired and used for said reservoir. The farm was then rented and used for farming purposes. The court held that it was taxable as it was not being used in the exercise of a municipal function.

In the case of *City of Toledo vs. Hosler, Treasurer*, 54 Ohio St., 418, the city had purchased lands in Hancock county and used the same for securing natural gas. The question was whether said property was taxable or not. The court held that the gas wells, pipe lines, pumping stations and machinery used by the corporation were public property used exclusively for a public purpose and were exempt from taxation.

In the case of *State ex rel. vs. Lynch, Auditor*, 88 Ohio St., 71, 117, Judge Donahue stated:

"I do not believe that governmental purposes include only the protection of life, liberty and property. On the contrary, I am firmly of the opinion that one of the most important duties of the state is to promote the health, convenience, comfort and welfare of its citizens and advance the standard of citizenship in every legitimate way. * * * It is difficult, perhaps almost impossible, to prescribe a limit where governmental functions end and private enterprise begins. In the last quarter of a century our views on this subject have so changed that a limit fixed along the line of the prevailing opinion on

that subject at that time would seem absurd now, and so it may be a quarter of a century hence."

It is stated also in the case of *Cincinnati vs. Lewis*, supra, that the description of the municipal property which is exempt from taxation indicates with unmistakable accuracy that the exemption is to extend to such property only as is actually employed in the exercise of municipal functions. If this conclusion were doubtful it would nevertheless be required by the established rule that all exemptions from taxation are to be strictly construed.

It is therefore my opinion that real property owned by the city of Dayton located in a township and not being annexed to the city, which is used exclusively in the exercise of municipal functions is public property used exclusively for a public purpose, and is therefore not subject to taxation by the township authorities for purposes of township government.

You also state that the people working upon said lands for said city are technically residents of the rural school district, and that apparently the rural school district is not entitled to collect tuition. You then specifically ask:

"Can the property owned by the city of Dayton located within the rural school district be taxed for school purposes, or can tuition be collected for such children?"

As said children are residents of said rural school district, it is evident, as you state, that tuition cannot be collected from said children for attending said school. Said lands owned by said city, if used exclusively for said public purposes, as hereinbefore stated, are exempt from taxation, and being exempt from taxation, it necessarily follows that they are not subject to taxation for school purposes.

Respectfully,

EDWARD C. TURNER,
Attorney General.

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APPROVAL, LEASE OF LAND IN ROSS COUNTY FOR OIL AND GAS
PURPOSES.

COLUMBUS, OHIO, March 19, 1927.

HON. JOSEPH T. TRACY, *Auditor of State: Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination Lease, in duplicate, between Joseph T. Tracy, Auditor of State, acting as State Supervisor of School and Ministerial Lands, as lessor, and Rutter and Hartwell, as lessees, covering 1760 acres of land located in sections 27, 29, 33, 35 and 36 in Ross county, Ohio, for oil and gas purposes.

My examination of the same reveals that said lease is proper as to form, and properly executed, and I am therefore returning the same to you with my approval thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.