

of education of the West Perkins Rural School District as it is now constituted, to centralize all the schools of the district; that the schools need not necessarily be centralized in one place within the district; and that any school buildings and lots of land upon which the buildings are located not utilized in the plan of centralization and not needed for school purposes may be disposed of at once.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1555.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
CUYAHOGA COUNTY.

COLUMBUS, OHIO, February 25, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1556.

TEMPERANCE SOCIETY.—PROPERTY EXEMPT FROM TAXATION, IF
USED EXCLUSIVELY FOR CHARITABLE PURPOSES.

SYLLABUS:

The property of a corporation not for profit organized as a temperance society is exempt from taxation under Section 5353, General Code, only if used exclusively for charitable purposes.

COLUMBUS, OHIO, February 25, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The K. Temperance Society, incorporated December 15, 1902, Articles of Incorporation being found in Volume 92, at page 110 of the Records of Incorporations, own some real estate in Ashtabula County, and have been under the impression for a great many years that the same was exempt from taxation.

I recently have had under consideration an action in foreclosure to collect the taxes, a considerable amount of taxes and interest having accrued over a period of a number of years. The purpose of the society as set forth in their Articles of Incorporation is as follows:

‘To promote temperance among the members of the society and the public at large, to combat the evils of the liquor traffic, to work for the betterment of society in general and to hold meetings for the purpose of carrying out the purposes above set forth.’

I would like your opinion as to whether or not, in your opinion, this real estate is exempt from taxation under Section 5353 of the General Code or any other provision of law now in effect.”

You have submitted additional information relative to the purposes for which the real estate of the above society is used as contained in a letter from the treasurer of said society, which letter is as follows :

“The property is used as a lodge and meeting hall for its members and the public at large. The society has a library of close to 500 books of which the members and the whole community at large takes advantage.

In the winter months there are classes of instruction for boys and girls in indoor athletics at the society's expense. The society gives the use of its hall to hold benefit entertainments.

The members of this society hold meetings once each week and they have a speaker come here to talk on temperance and the public is invited to come and listen. In the summer, they hold outdoor gatherings in the yard of the hall and have songs and speeches during them.”

Section 2 of Article XII of the Ohio Constitution, insofar as is pertinent to your question, is as follows :

“Laws shall be passed, taxing by a uniform rule, * * * all real and personal property according to its true value in money, * * * . Institutions used exclusively for charitable purposes, * * * may, by general laws, be exempted from taxation. * * * ”

Prior to amendment in September, 1912, this section provided that “institutions of purely public charity” may, by general laws, be exempt from taxation.

Section 5328, General Code, passed pursuant to the mandatory requirement of Section 2, Article XII of the Constitution, supra, is as follows :

“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. Such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title.”

Section 5353, General Code, enacted in its present form after the constitutional amendment in 1912, is as follows :

“Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation.”

In considering the principles applicable to a determination of whether a property is exempt from taxation, it is said in *Lee, Treasurer, vs. Sturgis*, 46 O. S. at p. 159 :

“For every presumption is in favor of that construction of the law which gives effect to the requirement of the section of the constitution referred to, where an exception or exemption is claimed, the intention of the General Assembly to except must be expressed in clear and unambiguous terms. ‘At the outset every presumption is against it. A well-founded doubt is fatal to the claim. It is only where the terms of the concession are too explicit to admit

fairly of any other construction that the proposition can be supported.' *Railway Co. vs. Supervisors*, 93 U. S., 595; *Tucker vs. Ferguson*, 22 Wall., 527. Intent to confer immunity from taxation must be clear beyond a reasonable doubt, for, as in case of a claim of grant, nothing can be taken against the state by presumption or inference."

The sole question here is, accordingly, whether or not the K. Temperance Society (and the real estate in question) is an "institution used exclusively for charitable purposes." If the answer to this question is in the affirmative, it is exempt under Section 5353, *supra*.

A somewhat parallel question was before the Supreme Court in the case of *Wilson, Auditor, et al. vs. Licking Aerie No. 387, F. O. E.*, 104 O. S., 137, the syllabus of which is as follows:

"1. By the provisions of Section 2, Article XII of the Constitution, as amended in 1912, institutions used exclusively for charitable purposes may by general laws be exempt from taxation.

2. The provision in Section 2, Article XII of the Constitution that institutions 'used exclusively for charitable purposes * * * may, by general laws, be exempted from taxation,' does not authorize the General Assembly to exempt from taxation the property of benevolent organizations not used exclusively for charitable purposes.

3. 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."

In this case the defendant in error, a corporation not for profit, sought exemption from taxation of certain of its real estate on the contention that such real estate was exempt by the then provisions of Sections 5364 and 5353, General Code. Section 5364, prior to repeal in 110 Ohio Laws, provided that real or personal property belonging to a religious or secret benevolent organization maintaining a lodge system should not be taxable. Section 5353, prior to amendment in 110 Ohio Laws, provided that property belonging to institutions of public charity only should be exempt from taxation.

The court held that, notwithstanding the then provisions of Sections 5353 and 5364, General Code, the constitution itself determined the question in the case, and decided the issue upon whether or not the defendant in error (and the real estate described in the petition) is an "institution used exclusively for charitable purposes". From the evidence in this case, it was disclosed that the property was used for a club room and lodge room purposes and for social gatherings for the members and their families and friends. It was further disclosed that the income from dues and assessments from the members and socials and bazaars and picnics was divided into three funds, a benefit fund, disbursed for sick benefits and death benefits and the per capita tax to the grand aerie, a general fund, used for over-head expenses, such as paying the physician for services rendered free of charge to the membership, and a social fund, used in its entirety for charitable and public donations. The court held that from this evidence it could not be said that the defendant in error was an institution used exclusively for charitable purposes and that accordingly its property was not exempt from taxation.

An earlier case which should be noted in passing upon your question is that of *Benjamin Rose Institute vs. Myers*, 92 O. S., 252, wherein it was held:

“The real estate belonging to an institution of purely public charity is exempt from taxation only when used exclusively for charitable purposes, and if such real estate is rented for commercial and residence purposes it is not exempt, although the income arising from such use is devoted wholly to the purpose of the charity.”

This case has been cited and affirmed numerous times by the Ohio Supreme Court in subsequent decisions. In one of these, *Jones, Treasurer, vs. Conn*, 116 O. S., 1, after pointing out that the principles upheld in the Rose Institute case applicable to real estate were equally applicable to personalty, it was held that personal property belonging to an institution of public charity is exempt from taxation only when used exclusively for charitable purposes. After commenting upon the 1912 amendment of Section 2, Article XII, Judge Allen said 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, as pointed out in *Zollman on Charities*, p. 473, ‘property or buildings might actually be used for charitable purposes and yet not be used exclusively.’”

In the case of *Zangerle vs. State, ex rel.* 120 O. S. 130, while no authoritative opinion was filed, the majority of the court held that both ownership and use must be exclusively charitable.

Applying this principle to the question here under consideration, there is possibly little doubt, in view of the authorities, but that the ownership of the property is charitable.

It is said in *Zollman’s American Law of Charities*, p. 192:

“A temperance union held to be a charity within the tax exemption laws, while the prevention of the use of intoxicating liquor, as a means of promoting individual and social welfare, has been emphatically declared to be a charitable purpose.”

In support of this text is cited *In re Moore*, 122 N. Y. Supp. 828, affirmed 128 N. Y. Supp. 1135, and *Haines vs. Allen*, 78 Ind. 100, 102.

Coming now to the question of use, it is not at all clear from the facts submitted whether the property is used exclusively for charitable purposes; if it is, it would appear that it is exempt from taxation under the provisions of Section 5353, *supra*. If, however, although the property belongs to an institution exclusively charitable, it is not exclusively used for charitable purposes, then, under authority of the Rose Institute, the Licking Aerie and the Zangerle cases, *supra*, it is not exempt from taxation.

It is believed that upon the statement of facts, a more specific answer to your inquiry may not be given.

Respectfully,
GILBERT BETTMAN,
Attorney General.