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APPROVAL, BONDS OF KNOX COUNTY, \$15,500.00, TO PAY COUNTY'S SHARE OF A BRIDGE CONSTRUCTION.

COLUMBUS, OHIO, June 25, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

489.

TAXATION—PROPERTY BEQUEATHED TO CHARITABLE INSTITUTION MUST BE USED EXCLUSIVELY FOR CHARITABLE PURPOSES TO BE EXEMPT FROM TAXATION.

SYLLABUS:

Property bequeathed to a charitable institution must be used exclusively for charitable purposes before it is exempt from taxation.

COLUMBUS, OHIO, June 25, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion, which is as follows:

“On or about the 6th day of September, 1921, the executors of the will of George H. Marsh, deceased, filed their first and final account in said estate and delivered the net assets to the trustees of what is known as the Marsh Foundation created by said will. This foundation, though not then in existence, was held, in Attorney General's Opinion No. 1623 for 1920, to be entitled to exemption from inheritance taxation under section 5334 of the General Code. A copy of all the will which is germane to this case may be found in said opinion.

Nothing has been done as yet towards carrying in to effect the intention of the testator by way of the erection of buildings for the reception of orphans, although it may be that some plans for such erection have been approved.

The assets in question consist of real estate having an assessed value of about \$500,000.00, and of personal property amounting to something over \$3,000,000.00. No taxes are being paid on the land and no return of the personalty was made to the assessor by the trustees of the foundation in the year 1922. The question now arises as to whether or not in view of the Attorney General's Opinion No. 2156 for the year 1921, such

personalty should or should not have been returned and taxes assessed both on it and on the land for the tax year 1922.

As an attempt so to assess taxes is likely to be resisted we desire to have your views on the matter before instructing the auditor how to proceed."

The will of George H. Marsh bequeathed the greater portion of his estate to the trustees of the Marsh Foundation an institution for charitable purposes created by the said Marsh will. The estate was valued at several million dollars. The trustees of the Foundation were directed by the will to found and maintain a home for orphans, to be located on the Marsh land, near Van Wert, Ohio.

Mr. Marsh died in 1919. In September, 1921, the executors of his will filed their final account and turned the property over to the trustees of the Foundation. Since that date, September, 1921, no tax return has been made by the trustees and no taxes have been paid since July, 1922.

A superintendent for the home has been employed, but no buildings have been erected on the Marsh land or elsewhere, and no home has been provided for any orphans. Some plans for the proposed buildings have been approved, but nothing further has been done towards the carrying out of the provisions of the Marsh will.

The question presented here is whether or not the property in the hands of the trustees of the Marsh Foundation left by George H. Marsh, is taxable at this time.

All property in Ohio is taxable, unless exemption is provided in the constitution. In Article XII, section 2 of the constitution we find:

"* * * institutions used exclusively for charitable purposes,
* * * may, by general laws, be exempt from taxation: * * *."

By the authority thus granted in the constitution, the legislature has exempted from taxation "institutions of public charity only" by the enactment of sections 5353 and 5353-1 of the General Code.

It is therefore the use of the property that determines whether or not it is exempt from taxation in Ohio. In an opinion of this department, volume 1, page 500, opinions of the Attorney General for 1921, it was held that property is "subject to taxation until it is devoted exclusively to the uses and purposes designated in the testator's will" and that "property will not become exempt upon the execution and delivery of the deed, but only when the use of the property for the purposes of the conduct of a children's home commences."

This we think is the law in this state. As early as 1850, when our constitution made no reference to charitable institutions, but statutes had been enacted providing for exemption of charitable institutions from taxation, the court held in the case of Cincinnati College v. The State, 19 Ohio 110, that "such property is only exempt from taxation when used exclusively for literary and scientific purposes."

The constitution of 1851 provided for the exemption of "institutions of purely public charity" by general laws, and under such provision the courts held that the use for charitable purposes was necessary in order to exempt the property from taxation. (92 O. S. 252.)

By reason of the great growth of charitable institutions and the establishment of hospitals and homes for the aged, infirm, widows and orphans by fraternal societies the convention of 1912 changed the constitutional provision to read

"institutions used exclusively for charitable purposes." In the 99 O. S. 185 in the case of *State v. Fulton* the court declares this change to be an enlarging of the former constitutional provision. Thus there has been a growing disposition by the constitution makers and the legislatures to exempt property used exclusively for charitable purposes. But the extent of the exemption from taxation of property so used is determined by the constitution itself. The constitution has prescribed a limit which is "institutions *used* exclusively for charitable purposes."

The property of the Marsh Foundation is not being *used* exclusively for charitable purposes, under the facts as set forth in your communication.

The real estate belonging to a charitable institution is exempt from taxation only when used for charitable purposes. (92 O. S. 252). The court in the case of *Wilson, Auditor v. The Licking Aerie*, 104 O. S. 137, speaking of property belonging to institutions of public charity says: "Such property can only be exempt under the constitution when used exclusively for charitable purposes."

There is no distinction made between real and personal property. The constitution says "institutions." The 104 O. S. 137 says "property". Section 5353 uses "property". Section 5353-1 reads: "Property, real, personal and mixed." Under the old statute as referred to in *The Cincinnati College vs. State* case the statute in one paragraph named buildings, etc., and another "money and credits." The court held that the *use* of the money as well as the *use* of the real estate determined whether or not it was exempt from taxation.

Moreover, it is the *use* of the property *now* and not what may be done in the future with the proceeds. In the Cincinnati case above mentioned the court declared "The law applies to the property as it finds it in *use*, and not to what may be done with its accumulations in the future." Though the property in the hands of the trustees of the Foundation is invested, and though the income therefrom accumulating is to be used eventually for charitable purposes, yet it is taxable until such time as it is so used.

We are therefore of the opinion that the property of the Marsh Foundation, real and personal, is taxable until such time as it is *used* exclusively for charitable purposes.

Respectfully,

C. C. CRABBE,
Attorney General.

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COLUMBUS, OHIO, June 25, 1923.

VIOLETIONS OF CRABBE ACT MAY BE PROSECUTED BEFORE A
MAYOR—NO FEE ALLOWED SHERIFF FOR AIDING POLICE OFFI-
CER OF CITY—MAYOR MAY NOT ISSUE WARRANT TO SHERIFF.

SYLLABUS:

1. *A person arrested for violation of the Crabbe Act may be prosecuted before a mayor.*
2. *A mayor may not issue a warrant to a sheriff nor allow sheriff fees for service of a warrant.*
3. *No fee can be allowed a sheriff or deputy sheriff for aiding a police officer of a city.*