

4541.

APPROVAL, BONDS OF JEFFERSON RURAL SCHOOL DISTRICT, JACKSON COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, August 3, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4542.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENT IN HAMILTON COUNTY, LAKE COUNTY AND DEFIANCE COUNTY.

COLUMBUS, OHIO, August 4, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4543.

APPROVAL, NOTES OF SOUTH EUCLID-LYNDHURST VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$26,000.00.

COLUMBUS, OHIO, August 4, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4544.

TAX EXEMPTION—CIVIC ORGANIZATION HOLDING LAND AND FUNDS INTENDING TO BUILD MEMORIAL BUILDING IN FUTURE—SUBJECT TO TAXATION.

SYLLABUS:

Where a civic organization holds title to a vacant lot and also holds funds with which, in the future, it intends to build on said lot a memorial building to soldiers, neither said lot nor said funds are, under the present law, exempt from taxation.

COLUMBUS, OHIO, August 4, 1932.

HON. CHARLES O. CHAPMAN, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication stating that The McArthur Civic Club is an association of resident citizens of McArthur, Ohio, who are mostly prominent women of the town, the primary purpose of which

association is the raising of a fund to erect a building as a memorial to the soldiers of Vinton County on a parcel of land heretofore deeded to the Club for that purpose, and that the Club holds a considerable amount of funds which were raised and are to be used solely for the purpose of erecting such memorial building and asking whether such grounds and funds or either should be exempted from taxation. I understand that the land in question is a vacant lot and that construction of the memorial building has not been started.

Article XII, Section 2 of the Ohio Constitution governs tax exemptions. Prior to its recent amendment, effective January 1, 1931, it provided in part:

“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, excepting all bonds outstanding on the first day of January, 1913, of the state of Ohio, or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and by the means of instruction in connection therewith, which bonds outstanding on the first day of January, 1913, shall be exempt from taxation but burying grounds, public school houses, houses used exclusively for public worship; institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; * * *”

Until amended by the last legislature, Section 5328, General Code, provided that “all real or personal property in this state, belonging to individuals or corporations, and all money, 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”.

Under that constitutional and statutory set-up, it was declared that only such property could be exempted from taxation as was authorized to be exempted by said section of the constitution. *Wilson vs. Licking Aerie*, 104 O. S. 137, syllabus No. 3; 1915 Opinions of the Attorney General, vol. 2, p. 1303. Said constitutional provision authorized the exemption of seven different kinds of property, namely: (1) certain bonds, (2) burying grounds, (3) public school houses, (4) houses used exclusively for public worship, (5) institutions used exclusively for charitable purposes, (6) public property used exclusively for any public purpose, and (7) personal property to an amount not exceeding in value five hundred dollars for each individual. The provisions respecting exemption of property in the first category were self-executing, while those relating to the other six categories merely empowered the legislature to pass laws establishing their exemption.

It is clear that the vacant lot about which you inquire would not have been exempt from taxation under the former provisions of Article XII, Section 2, because it does not fall within any one of the seven categories of property whose exemption was therein authorized. Obviously a vacant lot does not fall within classes 1, 2, 3, 4 or 7. Likewise, it does not fall within classes 5 or 6, for they relate to property used exclusively for certain purposes, and a vacant lot not used for any purpose can not, of course, be said to be used for such prescribed purposes. 1930 Opinions of the Attorney General, vol. 2, p. 1390; Zellmann on “American Law of Charities” (1924), Sections 739, 740 and 743; Annotations, 2 A. L. R. 545, 34 A. L. R. 634, 668-669; 26 R. C. L. 327; *Y. W. C. A. vs. Spencer*,

9 C. C. (N. S.) 351; *Mattlack vs. Jones*, 13 Oh. Dec. Repr. 2. See also, *New Jerusalem Society vs. Richardson*, 10 N. P. (N. S.) 214, at page 220.

It is not necessary, therefore, to inquire whether any statute passed prior to January 1, 1931, might be construed as attempting to exempt such vacant lot, for, having no constitutional authorization, such statute would, to the extent of such construction, have been unconstitutional and void. Neither is it necessary to consider whether a statute attempting to exempt such vacant lot would be constitutionally valid under amended Section 2 of Article XII, because no such statute has been passed since the effective date of said amendment and because any statute which was unconstitutional and void prior to said amendment would not be rendered valid by said amendment even though such a statute would be constitutional if it were now to be enacted after said amendment. See *Wilson vs. Licking Aerie*, 104 O. S. 137, 146-147; 1915 Opinions of the Attorney General, vol. 2, p. 1298; 1914 Annual Report of the Attorney General, vol. 1, p. 1051. Section 5328, General Code, provides, in part, that "All real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom," and since there is no valid, existing law which exempts the vacant lot in question, it is subject to taxation.

I come now to a consideration of the funds held by the Club for the purpose of erecting said memorial building which, I assume, are deposited in bank.

Section 5328-1, General Code, provides that "all moneys, credits, investments, deposits, and other intangible property of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted in this title," and it is apparent that the funds in question are taxable under this section unless there is some valid statutory provision exempting them from taxation. I shall proceed to consider a number of statutes which might possibly be advanced as necessitating such exemption.

Of course, there is Section 5353, General Code, which provides that:

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

If, for the purpose of argument, it were to be granted that a charitable institution existed in the situation you present, still, upon the authority of *Jones vs. Conn*, 116 O. S. 1, it must be concluded that the funds held by The McArthur Civic Club, with which it intends to erect said building, are not exempted by Section 5353, because they are not being exclusively used for charitable purposes. In the Jones case it was held that where a charitable trust was organized and directed to erect necessary buildings for a charitable home, the funds belonging to it which were to be, and which were eventually, used to erect said buildings, were not, prior to the time construction was begun, being exclusively used for charitable purposes and were not therefore exempt from taxation.

Section 5359, General Code, provides:

"Funds raised and set apart for the purpose of building monuments to the soldiers of this state, and monuments and monumental buildings, shall be exempt from taxation.

Assuming, for the purpose of argument, that this section purports to exempt such funds as you have in mind, it is apparent that, to that extent,

it would have been unconstitutional and void during the existence of Article XII, Section 2 in the form in which it existed prior to its recent amendment, for, as shown above, at least prior to the time of such recent amendment, no property could be exempted which was not authorized to be exempted by said Article XIII, Section 2; and the funds which you mention would not, through Section 5359, have fallen within any of the seven above enumerated types of property authorized to be exempted by said Article XII, Section 2.

Thus, clearly, said funds do not come within the category of burying grounds, school houses, houses of public worship or of the certain type of bonds mentioned in the constitution. A little reflection will reveal also that said funds would not, through Section 5359, fall within the three remaining categories which were named in said article and section, namely, (a) institutions used exclusively for charitable purposes, (b) public property used exclusively for any public purpose and (c) personal property to an amount not exceeding five hundred dollars for each individual.

As has already been shown, *Jones vs. Conn*, 116 O. S. 1, holds that funds held by an admittedly charitable institution with the intention of later using them to finance a charitable building program, are not, while merely being so held, being used exclusively for charitable purposes. Similarly, it can not be said that these funds, while merely being held, prior to the building program, comprise property which is being exclusively used for a public purpose.

Furthermore, though it were to be conceded for argument that said funds were authorized to be exempted by said Section 5359, it is clear that immunity of the funds mentioned in Section 5359 does not receive sanction in the provision of former Article XII, Section 2 which authorized the exemption of personal property not exceeding five hundred dollars for each individual, because former Section 5360 contained the laws passed pursuant to that authorization.

Hence, as just explained, even had Section 5359 purported to exempt such funds as you have in mind, it would have been to that extent, unconstitutional and void during the existence of Article XII, Section 2 in the form in which it existed prior to its recent amendment, because such exemption was not authorized by said article and section.

It is not necessary to consider whether Section 5359, assuming that it purported to exempt such funds as you have in mind, would, in that respect, be constitutional if it were not to be enacted for the first time under amended Section 2 of Article XII. Suffice it to say that no such law has been passed since that time. Moreover, said section (making the same assumption) being in contravention of the constitution prior to the latter's amendment, was, to that extent, void, and it would not be rendered valid by the constitutional amendment even though, were the statute to be enacted now, it would not contravene the present constitution. See *Wilson vs. Licking Aerie*, 104 O. S. 137, 146-147; 1915 O. A. G., vol. 2, p. 1298. The same holds true with reference to the similar statute, Section 14828. I find, therefore, that there are no valid, statutory provisions exempting from taxation the funds about which you inquire.

Answering your question specifically, I am of the opinion that where a civic organization holds title to a vacant lot and also holds funds with which, in the future, it intends to build on said lot a memorial building to soldiers, neither said lot nor said funds are, under the present law exempt from taxation.

Respectfully,

GILBERT BETTMAN,

Attorney General.