

upon a ticket there is no candidate or candidates for a designated office, a blank space, equal to the space that would be occupied by such name or names if they were printed thereon with the blank spaces herein provided for, shall be left."

In specific answer to your inquiry, it is my opinion that :

1. Candidates for commissioners to frame a charter under Section 8 of Article XVIII of the Ohio Constitution should be nominated as provided by general law for the nomination of other municipal officers.

2. Where no nominations have been made for such candidates, it is the duty of the election officials to provide blank spaces for such election upon the ballot, as provided in Section 5025, of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1022.

CHURCH PROPERTY—LEASED TO Y. W. C. A.—NOT EXEMPT FROM
TAXATION.

SYLLABUS:

Property owned by a religious society in this state which is leased by it to a Young Women's Christian Association from year to year or for a term of years at an annual rental specified in the lease, is not exempt from taxation, because used by the owner with a view to profit, even though it appear that such lessee, as an organization and in its use of the property, is an institution exclusively for charitable purposes.

COLUMBUS, OHIO, October 12, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication which reads as follows :

"Our commission has before us the application of the Windermere Presbyterian Church, Cleveland, Ohio, for exemption of certain property. Said property is leased to the Young Women's Christian Association for its exclusive use, but the Association, under the lease is to pay an annual rental of \$780.00 to the church.

Inasmuch as this rental is used for religious purposes, is this property exempt from taxation?

We will be pleased to have your opinion on this, or have a representative of your department present when the hearing is assigned."

As I view the question presented in your communication, the same does not call for any extended discussion. I assume that the Young Women's Christian Association holds the property here in question by lease from year to year or for a definite number of years. In this situation, said association would not be liable for the payment of the taxes on this property unless it has contracted to do so. However this may be, taxes in this state are levied on the corpus of real property unless otherwise provided by statute, and the practical question here presented is whether the real

property referred to in your communication as property, is exempt from taxation.

Section 2 of Article XII of the Constitution contains the following provision :

“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 * * * but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, * * * may, by general laws, be exempted from taxation.”

The above quoted provisions of the Constitution are not self-executing, otherwise than as they limit the power of the Legislature with respect to the kind and character of property that may be exempted from taxation.

Section 5349, General Code, provides, among other things, that “houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, * * * shall be exempt from taxation.”

By Section 5353, General Code, it is provided, inter alia, that “property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation.”

It is clear that the property here in question, in order to be exempt from taxation, must be either a house used exclusively for public worship and not leased or otherwise used with a view to profit, within the above quoted language of Section 5349, General Code, or it must be property belonging to an institution using the same exclusively for charitable purposes, as provided by Section 5353, General Code.

Without entering into any inquiry as to whether the property here in question is leased by the Windermere Presbyterian Church with a view to profit as those terms are used in Section 5349, General Code, it is sufficient to observe that there is nothing in your communication to indicate that this property is used exclusively for public worship either by said church society or by its lessee. It follows, therefore, that this property is not exempt from taxation under the provisions of Section 5349, General Code.

In the consideration of the application of the above quoted provisions of Section 5353, General Code, to the question at hand, it may be assumed for the purposes of the question that the Young Women's Christian Association, as an organization and in its use of this property, is an institution exclusively for charitable purposes. See Opinions of the Attorney General, 1928, Vol. I, p. 463. On the facts stated in your communication, however, it does not appear that the property therein referred to is property belonging to an institution using the same exclusively for charitable purposes, within the requirement of Section 5353, General Code.

Touching this question, the Supreme Court of this state, in the case of *Humphries vs. The Little Sisters of the Poor*, 29 O. S. 201, dealing with a statute which exempted from taxation “all buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit,” held that to entitle an institution of purely public charity to hold property exempt from taxation, the institution must not only own such property, but that it must be so used as to fulfill the requirements of the statute. The Supreme Court in this case further held that “real estate leased to such an institution for a term of years at a stipulated rent is not exempt from taxation, although, by the terms of the lease, the institution may have agreed with the lessor to pay the taxes.” The court in its opinion in this case said :

"It seems clear to us that the word 'institution' in this clause is used to designate the corporation or other organized body instituted to administer the charity, and, that the real estate described as belonging to such institutions has reference to property owned by the institutions; and that to entitle them to hold the property exempt from taxation, they must not only own it, but it must be so used as to fulfill the requirements of the statute."

The above quoted language of Section 5353, General Code, is not identical with the statutory provisions before the court in the case of *Humphries vs. The Little Sisters of the Poor, supra*, but I am inclined to the view that the same construction thereof is required so far as the question here presented is concerned.

It follows, therefore, that, inasmuch as the Young Women's Christian Association referred to by you does not own the property here in question, the facts stated in your communication do not meet the requirement for the exemption of the property under the provisions of Section 5353, General Code, and, by way of specific answer to the question presented in your communication, I am of the opinion that the property therein referred to is not exempt from taxation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1023.

VACANCY—MEMBER OF VILLAGE BOARD OF EDUCATION—HOW FILLED.

SYLLABUS:

Electors of a village school district are given no authority by law to fill a vacancy in a board of education, but such vacancy must be filled for the unexpired term by a majority vote of the remaining members of the board.

COLUMBUS, OHIO, October 14, 1929.

HON. DON W. MYERS, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"I am interested in the question relative to the proper method of filling a vacancy in a village board of education for an unexpired term wherein the death of the regular member occurred more than thirty days prior to the next regular election.

I have reviewed G. C. Section 10 which provides that a successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred, unless otherwise provided by law.

G. C. Section 4748, provides:

'Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy.'