

597.

PETITION — CERTIFICATION, SUMMARY—AMENDED SENATE BILL NO. 181, 93rd GENERAL ASSEMBLY, PASSED APRIL 6, 1939—SECTION 4785-175 G. C.

COLUMBUS, OHIO, May 16, 1939.

MR. ABRAHAM GERTNER, *Attorney-at-Law, 83 South High St., Columbus, Ohio.*

DEAR SIR: You have submitted for my examination a written petition bearing over one hundred names, containing a certified copy of Amended Senate Bill No. 181, passed by the 93rd General Assembly on April 6, 1939, approved by the Governor and filed in the office of the Secretary of State April 12, 1939, and a summary of the same under the provisions of section 4785-175, General Code, which act is sought to be referred to the electors. A copy of said act and a summary thereof is hereto attached.

I am of the opinion that the attached summary is a fair and truthful statement of Amended Senate Bill No. 181 and accordingly submit for uses provided by law the following certification:

“I, Thomas J. Herbert, Attorney General of the State of Ohio, pursuant to the duties imposed upon me under the provisions of section 4785-175 of the General Code of Ohio, hereby certify that, in my opinion, the attached summary is a fair and truthful statement of Amended Senate Bill No. 181, of the 93rd General Assembly.”

Respectfully,

THOMAS J. HERBERT,
Attorney General.

598.

GRANGE HALLS — TAXATION — NOT EXEMPT — SECTION 5356 G. C.—“PUBLIC PROPERTY” DEFINED.

SYLLABUS:

Grange halls are not exempt from taxation under the provisions of Section 5356 of the General Code of Ohio.

COLUMBUS, OHIO, May 17, 1939.

HON. HUGO ALEXANDER, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR: This will acknowledge the receipt of a recent communication from your office which reads as follows:

"One of the Township Trustees of this County has inquired as to whether or not Grange Halls are exempt from property tax. He observes that in our County these halls have been carried on the general property tax and calls our attention to section No. 5356 of the General Code that it might be possible to place these buildings on the exempt books. In view of this observation will you kindly give this office your opinion as to whether or not Grange Halls are exempt from property tax."

That certain property shall be exempt from taxation is provided for in Section 5356, General Code, which section reads as follows:

"Market houses, 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 purposes, notwithstanding that parts thereof may be lawfully leased, and property belonging to park districts, created pursuant to the provisions of section 2976-1 et seq., of the General Code, shall be exempt from taxation."

An examination of Section 5356, supra, reveals that if grange halls are exempt from taxation, they are exempt by virtue of that part of said section which mentions "houses or halls used exclusively for public purposes". The authority for the enactment of Section 5356, supra, is found in Section 2 of Article XII of the Constitution of the State of Ohio, which section provides in part as follows:

"* * * general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, * * *."

It will be noted that Section 2, Article XII quoted above authorizes the Legislature to pass laws exempting, inter alia "public property used exclusively for any public purpose". In the case of *Wilson, Auditor, et al. vs. Licking Aerie No. 387*, F. O. E., 104 O. S. 137, the court said in the third branch of the syllabus:

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."

Although Section 5356, *supra*, provides for the exemption of "houses or halls used exclusively for public purposes", Section 2 of Article XII of the Ohio Constitution authorizes the exemption of "public property used exclusively for any public purpose". Consequently, Section 5356, *supra*, must be interpreted in the light of and subject to the constitutional limitations. In view of the above, the meaning of the term "public property" must be determined. In Vol. 32, O. J. at page 610, it is stated:

"The term 'public property' denotes property belonging to the state or some political subdivision thereof."

A similar situation was before the court in the case of Board of Trustees of Gate City Guards vs. City of Atlanta, 113 Ga. 883, 54 L. R. A. 806. In the first branch of the syllabus the court said:

"Public property, within the meaning of that clause of the constitution which authorizes the General Assembly to exempt from taxation 'all public property', embraces only such property as is owned by the state or some political division thereof and title to which is vested directly in the state or one of its subordinate political divisions or in some person held exclusively for the benefit of the state or a subordinate public corporation."

The court said at page 886:

"That private property used exclusively for public purposes does not change the nature of the property or the title thereto so as to convert it into public property."

Considering the pronouncements above set out, it may be seen that grange halls are not included within the definition of the term "public property" and consequently are not exempted from taxation because of the constitutional limitation. It is, therefore, unnecessary to determine whether they are used exclusively for public purposes.

Therefore, in specific answer to your inquiry, I am of the opinion that grange halls are not exempt from taxation under the provisions of Section 5356 of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.