583.

TAXATION—REAL ESTATE CONVEYED IN TRUST FOR TWO YEARS FOR CHARITABLE INSTITUTION IS NOT EXEMPT.

SYLLABUS:

Real estate conveyed in trust for two years for a charitable institution is not exempt from taxation.

COLUMBUS, OHIO, July 16, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your communication in which you ask for an opinion on the following statement:

> "An owner of property on Euclid Avenue wishes to deed his property to a trust company to be held in trust for The Woman's Protective Association for a period of years provided the property will be free from taxation for the period of years it is held in trust for the said association. I assume from a cursory examination that the association is a charitable institution.
>
> Is such property exempt from taxation?
>
> We herewith enclose copy of the deed that has been duly executed and delivered to The Union Trust Company."

The deed enclosed with your communication, omitting the description therein and the acknowledgment thereto, is as follows:

> "KNOW ALL MEN BY THESE PRESENTS, That I, ORLANDO HALL, the Grantor, for the consideration of One Dollar ($1.00) received to my full satisfaction of THE UNION TRUST COMPANY, Trustee for The Woman's Protective Association, the Grantee, do give, grant, bargain, sell and convey unto the said Grantee, its successors and assigns, for the term of two (2) years, the following described premises: * * * (Description.)
>
> TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, its successors and assigns for two years, and I, the said Grantor, do for myself and my heirs, executors and administrators, covenant with the said Grantee that at and until the ensealing of these presents, I am well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and have good right to bargain and sell the same in manner and form as above written.
>
> IN WITNESS WHEREOF, etc."

The Ohio constitutional provision as found in Article XII, section 2, is that "institutions used exclusively for charitable purposes" may by general laws be exempt from taxation. A part of section 5353 G. C. reads "property belonging to institutions of public charity only, shall be exempt from taxation."

Under our constitutional and statutory provisions, the Ohio courts have held that real estate must both be owned and used by charitable institutions before it can be exempt from taxation. "It is necesary that ownership and use shall concur."

Meyers v. Akins, 4 O. C. D., 425.
Gerke v. Purcell, 25 O. S., 229.
Humphrey v. The Little Sisters, 29 O. S., 201.

In the Opinions of the Attorney General, on page 409, Volume 1, 1922, where the question was whether the title to the real estate of a charitable institution could be taken in the name of an individual trustee for the purpose of facilitating a mortgage loan and such property still be exempt from taxation, it was held that such could be done. If The Woman's Protective Association is the owner of the real estate referred to by you, it might be held in the name of a trustee and yet be exempt from taxation.

But where the conveyance is to The Union Trust Company, Trustee for The Woman's Protective Association, for the term of two years, can it be said that the latter is the owner thereof?

When the word "owner is used in a statute, the obvious nature and purpose of the statute may indicate its meaning." (Guild v. Prentis, 74 Atl. 1115.) "It usually denotes a fee simple estate, but it has been defined to be one who has the usufruct", etc. Though the word owner has at times a varied meaning, yet "the term 'owner' when used alone imports an absolute owner or one who has complete dominion of the property owned, as the owner in fee of real property." (McFeters v. Peters, 24 Pac. 1070.)

In a statute providing "that church property 'owned' by the congregation shall be exempt from taxation, land held by the congregation under a contract for a deed is not exempt." Words and Phrases, 2nd Series, Volume 3, p. 844.

The third paragraph of the syllabus in Humphrey v. The Little Sisters, 29 O. S., 201, is as follows:

> "Real estate leased to said 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."

And the fifth paragraph of the syllabus in People v. Bennet Medical College, the Supreme Court of Illinois, as reported in the 94th North Eastern Reporter, 110, reads:

> "Under Bennett Medical College charter, paragraph 8, exempting from taxation all property, real, personal or mixed, belonging to the corporation, land on which it had a lease for years, the leasehold not being taxed separate from the fee is not exempt, because not belonging to it, for while belonging denotes ownership, the word owner usually refers to a fee simple."

To exempt from taxation the property described in this conveyance it must "belong" to The Woman's Protective Association as well as be used by it. And since the word "belonging" as used in the statute denotes ownership, and ownership of real estate usually refers to a fee simple, I am of the opinion that the property described in the conveyance does not "belong" to The Woman's Protective Association, and hence is not exempt from taxation though it may at present be used for charitable purposes.

Respectfully,
C. C. CRABBE,
Attorney General.