

2326.

APPROVAL, CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION OF THE INDUSTRIAL FIRE INSURANCE COMPANY OF AKRON, OHIO.

COLUMBUS, OHIO, July 9, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith certificate of amendment to the articles of incorporation of The Industrial Fire Insurance Company of Akron, Ohio, with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2327.

TAX AND TAXATION—SISTERS OF NOTRE DAME HOLDING PROPERTY UNDER TWENTY-FIVE YEAR LEASE NOT ENTITLED TO EXEMPTION FROM TAXATION—TITLE MUST BE IN INSTITUTION OR HELD IN TRUST FOR ITS SOLE BENEFIT AND USE, EXCLUSIVELY CHARITABLE.

SYLLABUS:

To entitle institutions to hold property exempt from taxation, under Section 5353, General Code, on the ground that said property belongs to an institution used exclusively for charitable purposes, said property must be not only used exclusively for charitable purposes, but the legal title to the same must be in the institution, or held in trust for the sole use and benefit of said institution.

COLUMBUS, OHIO, July 9, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

“The Tax Commission of Ohio is in receipt of an application for exemption of property from taxation, said property being held under a twenty-five year lease, but used exclusively for religious purposes. This property is under lease by the Sisters of Notre Dame of Cleveland, Ohio.

In their application for exemption they also ask its exemption on the grounds of charitable and educational use. If the facts of the religious, charitable and educational use of this property is fully sustained, then the question which presents itself, is this:

Will the Ohio Statutes exempt this property from taxation, when the title remains in an individual and the organization requesting the exemption holds the property under a twenty-five year lease?

We are enclosing the application of exemption, map, letter and a copy of the lease, all of which papers the Commission desires to have returned for their files.”

As stated in the commission's communication, the application for exemption of the property in question from taxation, filed with the county auditor of Cuyahoga County, states that said premises are, and have been since the 19th day of March, 1928, used for religious, charitable and educational purposes.

Before determining the question as to the exemption from taxation, it is necessary first to consider the constitutional and statutory provisions relating thereto. Section 2 of Article XII of the Constitution of Ohio reads in part as follows:

"Laws shall be passed, taxing by a uniform rule, * * * all real and personal property according to its true value in money, * * * but * * * public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, * * * may, by general laws, be exempted from taxation; * * *"

Section 5349, General Code, enacted in conformity with the foregoing constitutional provisions reads as follows:

"Public school houses and 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, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state, but leaseholds, or other estates of property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or sub-district in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for the support of free education by such city, village, district or subdistrict."

Under the provisions of this section, it is public school houses and houses used exclusively for public worship, with the ground attached to such buildings necessary for the proper occupancy and necessary for the use and enjoyment thereof, not used with a view to profit, that are exempt.

Section 5353, General Code, reads as follows:

"Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions used exclusively for charitable purposes shall be exempt from taxation."

Under this section, property that belongs to institutions used exclusively for charitable purposes is exempt from taxation.

The Constitution authorizes the exemption of public school houses, houses used exclusively for public worship and institutions used exclusively for charitable purposes. Section 5349, General Code, exempts from taxation public school houses, houses used exclusively for public worship, with the grounds attached to such buildings for necessary and proper occupancy, use and enjoyment thereof, public colleges and academies and all buildings connected therewith and all lands connected with

public institutions of learning. Section 5353, General Code, exempts property belonging to institutions used exclusively for charitable purposes.

It is apparent that in order to be entitled to exemption from taxation under the Constitution of Ohio, the property in question must come within the classification of (a) public school houses, (b) houses used exclusively for public worship, or (c) institutions used exclusively for charitable purposes.

In the application for exemption of the property filed with the county auditor of Cuyahoga County, it is stated that:

"This property—buildings and grounds—is and will be used exclusively for religious, charitable and educational purposes."

You have also stated, however, that the applicant for exemption is not the owner of the property in question, but holds said property under and by virtue of a twenty-five year lease, and your question is as to whether or not said property is exempt, although it may be used for religious, charitable and educational purposes, if the title is not in the institution so using said property.

The lease, a copy of which you enclosed in your communication, reads in part as follows:

"THIS INDENTURE OF LEASE, Made this 30th day of June, 1923, by and between SOPHIE JORDAN, the Lessor (which expression wherever used herein shall include her heirs, personal representatives and assigns when the context so admits), and THE SISTERS OF NOTRE DAME OF CLEVELAND, OHIO, a corporation organized under the laws of Ohio, the lessee (which expression wherever used herein shall include its successors and assigns when the context so admits), witnesseth:

1. That for the rents and upon the terms and conditions hereinafter stipulated the Lessor has let and leased and does hereby let and lease unto the Lessee, its successors and assigns, for and during the full term of twenty-five (25) years, beginning on the 1st day of June, A. D. 1923, and ending on the 31st day of May, A. D., 1948, two parcels of land situated in the Village of South Euclid (formerly in the Township of Euclid), County of Cuyahoga and State of Ohio, and more particularly described as follows: * * *

TO HAVE AND TO HOLD the said premises, with the privileges and appurtenances thereunto belonging, for the full term aforesaid, under the terms and subject to the covenants and conditions on behalf of the Lessee herein contained.

2. In consideration of the making of this agreement, the Lessor grants to the Lessee the sole and exclusive right and option, if the Lessee shall not be in default hereunder, to purchase the fee of the said premises from the Lessor at any time between the expiration of the tenth (10th) year and the expiration of the twelfth (12th) year of the said term and after sixty (60) days written notice to the Lessor of the Lessee's election to make such purchase at and for the sum of One Hundred and Forty-seven Thousand, Eight Hundred and Twenty-five Dollars (\$147,825) to be paid in cash therefor, it being understood, however, that such option to purchase shall not survive any proper termination of this lease. If the premises shall be so purchased by the Lessee under the said option, the Lessor shall at the time of the Lessee's making the required payment convey to the Lessee by warranty deed containing the usual covenants of warranty and seizin a good merchantable title to the fee of the said premises free from all dower rights and all liens and encumbrances, excepting such as are assumed by the Lessee hereunder, and such convey-

ances shall be accompanied by a complete abstract of title showing such condition of the said title on the date of the transfer and prepared by a responsible Abstract Company doing business in Cleveland, Ohio. In order to protect the rights of the Lessee with respect to such option, the Lessor shall immediately after the execution and delivery of this agreement convey to The Union Trust Company, of Cleveland, Ohio, the legal title to the said premises, the same to be in the condition above provided for, and the Lessor shall at the same time make such agreement with the said Trust Company as may be necessary or proper in order that the said title may be so held by it in trust until the expiration of the period covered by the Lessee's said option to purchase the premises, or until the earlier exercise of such option, the said Trust Company being properly obligated to make such conveyance upon the Lessee's exercising its option to purchase and paying or tendering to the Lessor the said purchase price, and such purchase price shall be payable to the Lessor at the principal banking office of the said Trust Company. The Lessor and her successor in the equitable ownership of the said premises shall be obligated to join in such conveyance for the purpose of warranting the title thereto as above provided, or to supplement the same by her own conveyance containing such warranties. The conveyance so made to the said Trust Company by the Lessor shall not be understood to limit the right of the Lessor, her heirs and assigns, to convey the equitable title to the said premises, but all such conveyances shall be subject to the provisions hereof.

* * *

4. During the term of this lease the Lessee shall pay to the Lessor at such place in the City of Cleveland, Ohio, as the Lessor may from time to time designate by thirty (30) days' written notice to the Lessee, in equal quarterly payments in advance on the 1st days of January, April, July and October of each year, in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, or in legal money of the United States, at the option of the Lessor, rent for the said premises in the sum of Eighty-eight Hundred and Seventy Dollars (\$8,870.00) per year for each and every year of the said term; and the Lessee shall in case of any defaults in the payment of such rent pay to the Lessor for the period of every such default interest at the rate of eight per cent (8%) per annum on the amounts in arrears.

5. Beginning with the taxes and assessments which shall be payable for and on account of the said premises and the improvements thereon for the last half ($\frac{1}{2}$) of the year 1923 (the Lessor being obligated to pay the taxes and assessments thereon for the first half ($\frac{1}{2}$) of 1923 and for all preceding years), the Lessee shall pay to the public officers charged with the collection thereof, and as the same may become due and payable during the said term, all taxes, assessments and public charges which may hereafter during the term of this lease be levied or assessed on this lease and on the said premises and all buildings and other improvements now or hereafter standing thereon, and will at all times save harmless the Lessor, the said demised premises and the said buildings and improvements from such taxes, assessments and public charges, as well as from any and all claims for damages in any way becoming chargeable to or payable for or in respect of the said premises or the use and occupancy thereof during the said term, and will, upon the written application of the Lessor, furnish to the Lessor at Cleveland, Ohio, for inspection and such use as may be proper for protecting the Lessor's estate in the said premises, written evidence of such payments; provided, however, that the Lessee shall not be chargeable with any inheritance, estate or income

tax or tax of similar nature payable by or for the Lessor in respect of the Lessor's ownership of the said premises or the rents herein reserved. The Lessee shall have the right to delay the payment of any such taxes, assessments or other public charges during any time in which the validity is being challenged in good faith and pending any action brought to determine such validity, the Lessor being entitled in the meantime to require reasonable indemnity against liability therefor. * * *

12. This lease shall not be assigned or transferred by the Lessee at any time without the written consent of the Lessor, but the Lessee shall be entitled to sublet portions of the premises at any time to persons of reasonable responsibility. * * *

15. Nothing herein contained shall authorize the Lessee to do any act or make any contract which may encumber or affect in any manner the title or rights of the Lessor in the leased premises or improvements thereon, it being expressly agreed that all buildings, improvements and alterations constructed or made by the Lessee shall be promptly paid for by the Lessee. It is especially agreed (notice being hereby given to that effect) that no contract, transfer, assignment, mortgage, judgment, mechanic's lien or other lien arising out of transactions with the Lessee shall in any manner affect the title of the Lessor in the leased premises or his interests under this lease in the buildings and improvements heretofore or hereafter erected on said premises, or take precedence over the rights and interests of the Lessor herein. * * *

It is evident that the legal title to said property remains in the lessor, Sophie Jordan, and is not in the lessee, the Sisters of Notre Dame, of Cleveland, Ohio. It is my understanding that, as previously stated, the Commission is not asking my opinion concerning the character of the lessee, as to whether it is religious, charitable or educational, and no statement of facts having been submitted to me in regard thereto; I am therefore not determining that question, and am limiting this opinion to the Commissioner's question as to whether said institution may claim exemption for this property when the title is not in said institution.

In the case of *Humphries, Auditor, et al., vs. The Little Sisters of the Poor*, 29 O. S. 201, the second paragraph of the syllabus reads:

"The word 'institutions', in the sixth clause of Section 3 of the tax law, is used to designate the corporation or other organized body instituted to administer the charity, and the real estate described as belonging to such institutions has reference to property owned by them; and to entitle such institutions 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."

At page 206 of the opinion, it was said as follows:

"The next question is whether the property described in the petition comes within the exemption defined by the statute.

The clause of the statute under which the exemption in the present case is claimed is as follows:

'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, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.' S. & S. Stat. 761.

It seems clear to us that the word 'institutions' 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.

That such is the meaning of the word 'institutions' is manifest from the last part of the sentence, which exempts moneys and credits. Moneys and credits, to be exempt, must be appropriated solely to sustain and must belong 'exclusively to such institutions.'

The word 'belonging' is used in the same sense throughout the clause, and, as there used, means ownership.

We do not say that the legal title must be vested in the institution. If the legal title were held in trust for the sole use and benefit of the institution, the property in such case would be regarded as belonging to the institution. *Gerke vs. Purcell, supra.*

In this case, two of the parcels were owned by the institution, and, as we understand the record, were actually occupied and used by it in connection with the parcel held by the lease on which the buildings used by the institution were situated.

Under the statute, real estate is to be listed for taxation by the owner. This duty, as respects the leased premises in question, rested upon the lessors. The taxes were a charge against them and not against their lessee, and, as respects the public, it was their duty to see that the taxes were paid, without reference to their agreement with the lessee."

It is clear from the foregoing that, in order legally to claim an exemption from taxation for certain property by an institution, the property must not only be used by the institution exclusively for charitable purposes, but must belong to the institution claiming the exemption, and the legal title of said property must be vested either in the institution, or the title must be held in trust for the sole use and benefit of the institution. It is further clear that a lessee of property is not the owner of the property, and it cannot be said that the property belongs to an institution used exclusively for charitable purposes. The lease in question provides that the lessee shall pay the taxes, but this does not relieve the lessor of the duty to see that the taxes are paid without reference to any agreement with the lessee.

The third paragraph of the syllabus in *Humphreys, Auditor vs. The Little Sisters of the Poor, supra*, reads as follows:

"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."

It is also stated on page 207 of the opinion that:

"The operation of the statute for the levying of taxes and enforcing their collection is not affected by the agreement of parties for their payment, and the liability of the lessors in the present instance to pay the taxes on the leased premises is the same in respect to the public as it would have been if the lessee had not stipulated to pay them."

It is evident that the right to exemption from taxation of the property in so far as the claim to exemption is based upon the fact that it is property belonging to an institution used exclusively for charitable purposes must therefore be denied.

It is noted from the letter of the county auditor which you enclosed with your communication, to the lessee under date of April 21, 1928, that he stated as follows:

"In regard to the application for exemption of property from taxation situated in South Euclid on Green Road, we find upon examination of the local authorities that this property is not exempt because it is not owned by your corporation, it being only under a twenty-five year lease which we think does not permit its exemption. * * *"

It is my opinion that to entitle institutions to hold property exempt from taxation, under Section 5353, General Code, on the ground that said property belongs to an institution used exclusively for charitable purposes, said property must be not only used exclusively for charitable purposes, but the legal title to the same must be in the institution, or held in trust for the sole use and benefit of said institution.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2328.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND McCURRAN BROTHERS, XENIA, OHIO, FOR THE CONSTRUCTION OF TWO COTTAGES, OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME, XENIA, OHIO, AT AN EXPENDITURE OF \$47,760.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, July 9, 1928.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for The Board of Trustees of Ohio Soldiers' & Sailors' Orphans' Home, Xenia, Ohio, and McCurran Brothers, of 39 Green Street, Xenia, Ohio. This contract covers the construction and completion of General Contract for two Cottages (Girls' cottage and Boys' Cottage) (exclusive of Plumbing, Heating and Electrical Contracts), Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio, and calls for an expenditure of Forty-Seven Thousand, Seven Hundred and Sixty and no/100 Dollars (\$47,760.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond upon which the Fidelity and Deposit Company of Maryland, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required