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PROPERTY EXEMPT FROM FLORIDA TAXATION

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It is proposed in this article to discuss the property which is exempt from taxation under the Constitution, statutes and decisions of the State of Florida. Among the topics treated will be exemptions of property of educational institutions, charitable institutions, fraternal and benevolent institutions and churches, the exemption of public property, the homestead tax exemption, and various miscellaneous exemptions.

The Law of Taxation is constantly changing and there have been numerous amendments of the Florida tax laws in the past few years. In the field of state taxation as in the field of federal taxation, there are apt to be many conflicting and confusing decisions. This is not a reflection upon the courts but is brought about by a number of factors, including changes in economic conditions, changes in political philosophies, the ingenuity of clever persons planning devices for the evasion of taxation, and, in state taxation, the fact that tax legislation is frequently prepared by persons without the proper training, knowledge or experience.

The Florida Constitution provides that the Legislature shall prescribe such regulations as shall secure a just valuation of property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes,¹ and that the property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the Legislature should so enact, shall be subject to taxation unless such property be held and used exclusively for

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¹ Art. 9, Sec. 1, Fla. Constitution.

religious, scientific, municipal, educational, literary or charitable purposes.² The Florida Statutes provide that all real and personal property in this state, and all personal property belonging to persons residing in this State, shall be subject to taxation in the manner provided by law, unless expressly exempted from taxation.³ From the foregoing constitutional and statutory provisions it would appear, first, that all property in Florida is subject to taxation unless it is expressly exempted by law, and, second, that all property of corporations shall be subject to taxation unless such property shall be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.

EDUCATIONAL INSTITUTIONS

The laws of Florida expressly exempt such property of educational, literary, benevolent, fraternal, charitable and scientific institutions within the State as is actually occupied and used by them for the purposes for which they have been organized, provided not more than seventy-five per cent of the floor space of the property is rented, and the rents, issues and profits are used for the educational, literary, benevolent, fraternal or charitable purposes of the institutions.⁴ The proviso clause was added to the law by Chapter 18312, Laws of 1937, except that this chapter used the language "fifty per cent" instead of "seventy-five per cent", and Chapter 19376, Acts of 1939, changed the percentage to seventy-five per cent. In the case of *Rast v. Hulvey*,⁵ an individual used certain land and buildings for a school known as Florida Military Academy but also used the property for his home, and it was held that the property was not exempt. It is entirely possible that in this case of *Rast v. Hulvey*, *supra*, if it had been made to appear that it was necessary for the owner of the school to live on the premises in order to preserve the property and to conduct the school, then the exemption

² Art. 16, Sec. 16, Fla. Constitution.

³ Sec. 192.01 Fla. Stat. 1941.

⁴ Sec. 192.06(3), Fla. Stat. 1941.

⁵ 80 So. 750.

might have been granted. In the case of *Lummas v. Florida Adirondack School*,⁶ a corporation organized solely to conduct a school owned property in Florida which it used for preparatory school purposes during the months of January, February and March, and the corporation charged tuition. The Supreme Court held that the property of the corporation was exempt. This case was followed in the case of *Lummas v. Miami Military Academy*.⁷

In the case of *University Club v. Lanier*,⁸ it appeared that the University Club was a corporation not organized for profit, that the Club maintained a small library and dining-room, that the Club was open and run not only for members but also for other social organizations, that the Club provided meals for its members at a charge, that the dining-room was on a self-sustaining basis, and that the Club proposed to give scholarships to the State University and had given one scholarship. It was held that the property was not exempt from taxation because it was not used exclusively for educational or literary purposes. There seems to be no difficulty with these reported cases dealing with exemptions of educational institutions. In the cases where the exemptions were granted the property was held and used solely and exclusively for educational purposes.

In the case of *Riverside Military Academy, Inc. v. Watkins*,⁹ there was presented the following state of facts: The property of the Military Academy had been used exclusively for educational purposes and was therefore tax exempt, and thereafter the Government instituted condemnation proceedings by which it acquired the right to occupy the Academy property until after the termination of World War II. It was held that the property was not subject to taxation since the exemption of governmental property from taxation applied upon the Academy's loss of the use of the property. This is a very close case, since the title was vested in the Military Academy, an

⁶ 168 So. 232.

⁷ 168 So. 241.

⁸ 161 So. 78.

⁹ 19 So. (2d) 870.

educational institution, but was not being used by it for educational purposes, and therefore the educational exemption would probably not apply. While the property was occupied by the United States Government, it was not property of the United States as required by the exemption law." The decision was perhaps justified on the ground of public policy during times of war.

CHARITABLE, FRATERNAL AND BENEVOLENT INSTITUTIONS

The courts have had considerable difficulty in determining when the property of certain charitable institutions and lodges are exempt from taxation. The constitutional provisions discussed above speak of exemptions for educational, literary, scientific, religious or charitable purposes,¹⁰ and not for lodge, fraternal or benevolent purposes. The statute dealing with the exemption of the property of charitable, fraternal and benevolent institutions is the same as that which sets forth the exemption of the property of educational institutions,¹¹ and provides for the exemption of the property of benevolent, fraternal and charitable institutions, although the Constitution apparently calls for no exemption of the property of such benevolent and fraternal institutions. This same section of the Statutes, as now amended, allows the exemption of property of these institutions, whether incorporated or not, provided not more than seventy-five per cent of the floor space is rented. In the case of corporations, this seems to be contrary to the provision of the Constitution stating that the property of all corporations shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.¹²

In view of the apparent conflict between the Constitution and the Statutes, there is little wonder that the courts have had trouble in deciding certain cases, particularly after the adoption of said Chapter 19376, Acts of

¹⁰ Sec. 192.06(1), Fla. Stat. 1941.

¹¹ Art. 9, Sec. 1, Fla. Constitution, and Art. 16, Sec. 16, Fla. Constitution.

¹² Sec. 902.06(3), Fla. Stat. 1941.

¹³ Art. 16, Sec. 16, Fla. Constitution.

1939, which permitted certain institutions to rent seventy-five per cent of the floor space of their property and still claim a tax exemption. In the case of *State ex rel Miller v. Doss*,¹⁴ it appeared that Lake County Medical Center, Inc., a non-profit corporation, owned a four story building, the three upper floors being used exclusively for charitable purposes and the first floor containing places of business rented to private persons. The rents paid were used exclusively to operate a hospital. The Supreme Court of Florida held that this property was subject to taxation under the applicable constitutional provisions.¹⁵ This case involved taxes for the year 1938 and subsequent years. The court in its opinion did not refer to the aforementioned 1939 law which permitted the renting of seventy-five per cent of the floor space without forfeiting the exemption, but it did refer to Chapter 18312, Laws of 1937, which permitted the renting of fifty per cent of the floor space without forfeiting the exemption. The court came to the conclusion that, since the Florida Constitution provided that no property of a corporation should be exempt unless it was used exclusively for certain purposes, a statute which permitted an exemption when a portion of the property was used for different purposes, was unconstitutional. We agree with this conclusion since the statute should not be allowed to enlarge the constitutional provision.

In the case of *State ex rel Cragor Co. v. Doss*,¹⁶ title to certain property belonged to the Trustees of Leesburg Lodge No. 58, I.O.O.F., and the Trustees for Herman Lodge No. 27, Knights of Pythias, neither of said lodges being incorporated. The upper floor was used for lodge purposes and the ground floor was rented for commercial purposes, but not more than seventy-five per cent of the floor space was rented and the rents were used for benevolent or charitable purposes. The Supreme Court of Florida held this property to be exempt. It is to be noted that this case does not deal with the property of corporations, and that consequently no exclusive use is required

¹⁴ 2 So. (2d) 303.

¹⁵ Art. 16, Sec. 16, Fla. Constitution.

¹⁶ 8 So. (2d) 15.

by the Florida Constitution. However, the Constitution, in speaking of tax exemptions, does not mention the property of benevolent or fraternal institutions or the property of lodges,¹⁷ and, under a strict construction of the constitutional provisions, it would appear that the property of fraternal or benevolent institutions and the property of lodges should not be exempt from taxation.

There was a second case under the same style of State *ex rel* Cragor Co. v. Doss,¹⁸ which was a case similar to the first case of State *ex rel* Cragor Co. v. Doss, *supra*, the main difference being that the property involved in the second case belonged to the Woman's Club of Leesburg and Lodge No. 58, F. and A. M., both corporations. The property of the Woman's Club was a two story building, and that of the Lodge was a three story building. The Woman's Club property was rented not exceeding five times per year at a charge which was sufficient to pay lights, janitor's fees and repairs, and two small rooms on the ground floor constituting about one-sixth of the floor space was rented to the Works Progress Administration, for which a monthly compensation was paid, the balance of the ground floor being used to house the Leesburg Public Library for which no rent was paid. The Lodge property consisted of three floors of equal area, the first floor being used for business purposes, the second floor for business and professional offices, and the third floor for lodge rooms, all revenues collected from rents being used to retire indebtedness on the property. The lower court held that five-sixths of the Woman's Club property should be exempt from taxation and one-sixth thereof should be taxed, that one-third of the value of the Lodge property should be exempt and two-thirds of it should be taxed. The Supreme Court affirmed the lower court and said that Art. 16, Sec. 16, Fla. Constitution, was designed to cover the property of certain corporations for profit which had been enjoying exemptions, and had no reference to Woman's Clubs and Masonic Lodges like those involved in this case. The Supreme Court concluded its

¹⁷ Art. 9, Sec. 1, Fla. Constitution.

¹⁸ 8 So. (2d) 17.

opinion by stating that if the taxes on the taxable portion of the property were not paid and a sale for nonpayment of taxes should become necessary, the entire property might have to be sold. We feel that this case could well have been decided differently, first because the limited constitutional exemption should not be enlarged by statute, and, second, because under the Florida theory of in rem taxation, a fractional portion of real estate should not be taxed.

Apparently litigants were still not yet satisfied that the law had been settled with reference to the exemption of property owned by an incorporated lodge or fraternal institution where a portion of the property was rented to outsiders, and the matter again came up in the case of *Rogers v. City of Leesburg*,¹⁰ where the City of Leesburg undertook to tax the property of Leesburg Lodge No. 58, Free and Accepted Masons, a corporation. The building in question was three stories high, each floor being of the same proportions, the first and second floors being rented for professional and commercial purposes, and the third floor being used for lodge purposes, so that less than seventy-five per cent of the total floor space was rented. It further appeared that the rents were used to retire the indebtedness against the property and for the fraternal purposes of the Lodge. One side claimed that the case was governed by *State ex rel Miller v. Doss*, supra, while the other side relied upon the first case of *State ex rel Cragor Co. v. Doss*, supra. In a four to three decision a majority of the court held that the first Cragor case governed the situation and that the property was exempt from taxation. In a dissenting opinion Mr. Justice Adams stated that the first case of *State ex rel Cragor Co. v. Doss*, supra, was not applicable because the claimant was not a corporation in that case while the claimant was a corporation in the *Rogers* case. The second case of *State ex rel Cragor Co. v. Doss*, supra, was not even mentioned in the *Rogers* case. Apparently the Supreme Court has now decided that, whether the owner

¹⁰ 27 So. (2d) 70.

of property is a corporation or is not a corporation, if twenty-five per cent or more of the property is used for educational, literary, benevolent, fraternal or charitable purposes, if not more than seventy-five per cent of the floor space is rented, and if the rents, issues and profits are used for educational, literary, benevolent, fraternal or charitable purposes of said institutions, the entire property is exempt. While many cases have held that exemptions from taxation should be strictly construed, the Supreme Court has been liberal in allowing exemptions to charitable institutions and to lodges and fraternal institutions. At least the law now seems to be well settled on this point.

An interesting case is that of *Miami Battle Creek v. Lummus*.²⁰ Here it appeared that Miami Battle Creek, a corporation, was organized as a corporation not for profit, that its president was Dr. John H. Kellogg, a well known physician, and that it operated a hospital in Dade County, Florida. The hospital charged many patients regular rates, and paid reasonable salaries to its officers, but nurses were trained and public lectures were given at the hospital and its funds were used for educational and charitable purposes. The hospital property was held exempt from taxation. In this case the court emphasized the nature of the corporation rather than the use to which the property was put. This decision can be justified on the theory that, since the corporation was incorporated as a non-profit corporation and actually operated as a charitable, scientific and educational corporation, its property must necessarily have been used for charitable, scientific and educational purposes even though most patients paid for the use of hospital rooms.

CHURCH PROPERTY

Under the applicable statute there is exempt from taxation all houses of public worship and lots on which they are situated, and all furniture therein, but it is provided that any building, being a house of worship which shall be rented for any purposes except for schools or places of worship, shall be taxed the same as other property.²¹ In

²⁰ 192 So. 211.

²¹ Sec. 192.06(4), Fla. Stat. 1941.

Jefferson Standard Life Insurance Co. v. City of Wildwood," an insurance company owned property that it leased to a church, which used it for religious purposes, but it was held that the property was not exempt since it was not "held and used exclusively for religious purposes."

In *Lummas v. Miami Beach Congregational Church*,²² certain property was conveyed to the church with the restriction that it should be used for church purposes only. For six years assistant pastors of the organization lived on the property without payment of rent, serving as caretakers. The land was originally purchased as a site for a church, but these plans did not materialize on account of the financial depression. In 1934 all of the buildings were razed. Subsequently the land was used for meetings of clubs, committees and social gatherings of the church and a Boy Scout troop sponsored by it. Apparently this property would not have been exempt under said statutory provisions because there was no church building and the property was not used exclusively for schools or places of worship. However, the Supreme Court of Florida held the property exempt under Art. 16, Sec. 16, of the Florida Constitution because the property was held exclusively for religious purposes, particularly in view of the restriction in the deed. In so holding the Supreme Court stated that said constitutional provision was self-executing and did not need a legislative enactment to make it effective. We feel that there is a great deal of doubt as to the soundness of this decision. It will be remembered that in the case of incorporated lodges, the court, on the basis of a statute, held property to be exempt, although the Constitution seemed to provide to the contrary. However, in the case of churches, the statute requires that property of a church must be used for schools or places of worship in order to be exempt, and the court in this instance entirely disregarded the statute. Here again the Supreme Court has been extremely liberal in allowing an exemption.

PUBLIC PROPERTY

It will be noted that the statute provides for the exemption from taxation of all property of the United States

²¹ 160 So. 208.

²² 195 So. 607.

and the State of Florida, except such property of the United States as shall be taxable by the State or any subdivision or municipality thereof under any law of the United States, and also all public property of the counties, cities, and school districts used or intended for public purposes." Ordinarily lands belonging to the State of Florida or to the United States are not subject to taxation. Suppose the state or the United States should enter into a contract to sell property to an individual, would the property be subject to taxation before a deed was issued? In the case of *Mundee v. Freeman*,²⁸ it was held that when the Trustees of the Internal Improvement Fund of Florida had sold property to an individual, and the individual had made entry and had paid the purchase price, but no deed had been given, the property was subject to taxation. In the case of *Bancroft Inv. Corporation v. City of Jacksonville*,²⁹ it appeared that certain property was owned by the United States, that a contract of sale was made to a private purchaser, that a down payment was made and the purchaser let into possession, that the property had been used for private purposes, but that a balance remained unpaid on the purchase price. The Supreme Court of Florida, by a divided court, held that the property was subject to taxation. This conclusion was no doubt influenced by a recent decision of the Supreme Court of the United States.³⁰

As heretofore seen, the statute exempts from taxation property belonging to the State of Florida and to counties, cities, and school districts. Therefore, if the title to a street should be owned by the state or county or city, the street would be exempt from taxation. However, in many cases in Florida the fee simple title to property used as a street does not belong to the state or county or city, but title thereto is vested in an individual who has dedicated

²⁸ Sec. 192.06(1)&(2), Fla. Stat. 1941.

²⁹ 3 So. 153.

³⁰ 27 So. (2d) 162.

³¹ *S. R. A. Inc. v. State of Minnesota*, 326 U.S. --, 66 Sup. Ct. 749; pending Bill H. R. 10 before United States House of Representatives permits state, county or municipality to tax government property which is under contract of sale to private individual.

the use of the street to the public. In such cases the members of the public have only an easement or right to use the street. The Florida Statutes do not specifically exempt a public street which is owned by an individual even though it has been dedicated to the public for street purposes. However, it seems to be the general law that even in the absence of statute a public street is not subject to taxation." The Supreme Court of Florida has held, in the case of *Wolfson v. Heins*,²⁷ that private streets, which are owned by private individuals and not dedicated to the public, are subject to taxation. In *Marvin v. Housing Authority of Jacksonville*,²⁸ it was held that the real and personal property of the Housing Authority of Jacksonville, organized under an act creating housing authorities to undertake slum clearance, is exempt from all ad valorem taxes.

HOMESTEAD TAX EXEMPTION

Every person who has the legal or equitable title to real property in Florida and who resides thereon and in good faith makes the same his or her permanent home or the permanent home of another or others legally or naturally dependent upon said person, is entitled to an exemption from all taxation, except for the assessment of special benefits, up to the assessed valuation of Five Thousand Dollars on one home and contiguous real property, as defined in Art. 10, Sec. 1, of the Florida Constitution for the year 1939 and thereafter. The title may be held by the entireties, jointly or in common with others, and the exemption may be apportioned among such of the owners as reside thereon in accordance with their respective interests, but no exemption of more than Five Thousand Dollars may be allowed to any person or any one dwelling house, nor may the amount of the exemption allowed any person exceed the proportionate assessed valuation based on the interest owned by such persons. These provisions appear in an amendment to the Florida Constitution adopted in 1938 and in the Statutes.²⁹ The homestead tax

²⁷ *Cooley on Taxation* (4th Ed.), Sec. 638, at page 1336; *Collector of Taxes v. Boston*, 180 N.E. 116, 81 A.L.R. 1515.

²⁸ 6 So. (2d) 858.

²⁹ 183 So. 145.

³⁰ Art. 10, Sec. 7, Fla. Constitution; Sec. 192.12, F.S.A. 1941.

amendment was first adopted in 1934, but the 1938 amendment was considerably broader and more liberal than the earlier one.

Vendees in possession of real estate under bona fide contracts to purchase, when such instruments are recorded, and who reside thereon in good faith and make the same their permanent home, and widows residing on real estate by virtue of dower or other estates therein limited in time by deed, will, jointure, or settlement are deemed to have legal or beneficial title to the property for homestead tax exemption purposes." The words "resident", "residence", "permanent residence", "permanent home" and those of like import, are not to be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may from time to time temporarily reside."

In the case of *Steuart v. State ex rel Dolcimascolo*,²¹ it was held that an alien head of a family residing on a homestead in Florida was not entitled to the constitutional homestead tax exemption because he was not a citizen of Florida. This decision was handed down in 1935 and was based upon the amendment adopted in 1934. Under the 1934 amendment, in order to be entitled to the homestead tax exemption, one must have been a citizen of Florida residing in Florida and must have been a head of a family. Under the present provision citizenship is no longer required, nor is it necessary that one be a head of a family. Under the existing law, a single man who is a subject of some other country and who has only a contract to purchase property and who spends his summers away from Florida may be entitled to a homestead tax exemption if he in good faith calls the Florida property his home to the exclusion of all others.

When the amendment to the Constitution granting the homestead tax exemption was first adopted there were many bonds outstanding which had been issued by munici-

²¹ Sec. 192.13, Fla. Stat. 1941.

²² Sec. 192.14, Fla. Stat. 1941.

²³ 161 So. 378.

palties, counties or other taxing districts. The full taxing power of the municipality, county or taxing district was pledged as security for the payment of these bonds. In a number of cases the question arose as to whether homesteads were taxable for debt service as to bonded indebtedness existing at the time of the adoption of the amendment. The Supreme Court of Florida held that homesteads were taxable for such debt service on bonded indebtedness,³⁴ and also that where original municipal bonds were issued prior to the adoption of the homestead tax exemption amendment, homesteads were liable for a tax to service bonds issued for the purpose of refunding such original bonds of the city.³⁵

MISCELLANEOUS EXEMPTIONS

The Constitution and Statutes of Florida provide for many different types of exemptions in addition to those already discussed. Included in the property so exempt are burying grounds not owned or held by individuals for speculative purposes, and tombs and rights of burial;³⁶ public libraries and certain property belonging to and connected with public libraries;³⁷ certain property belonging to agricultural societies;³⁸ certain property owned by regularly constituted women's clubs of Florida, or the American Legion, or certain college fraternities or sororities;³⁹ certain homes, clubhouses, hospitals and other property owned and operated by certain organizations of ex service-men;⁴⁰ certain property of Young Men's Christian Associations;⁴¹ the real and personal property of public utilities owned, operated or controlled by a city but being in a county other than the county in which the city is located;⁴² and certain property of industrial plants en-

³⁴ *Yowell v. Rogers*, 175 So. 772; *City of Coral Gables v. State*, 176 So. 40.

³⁵ *Richard v. City of Fort Lauderdale*, 1 So. (2d) 202.

³⁶ Sec. 192.06(4), Fla. Stat. 1941.

³⁷ Sec. 192.06(5), Fla. Stat. 1941.

³⁸ Sec. 192.06(6), Fla. Stat. 1941.

³⁹ Sec. 192.06(8), Fla. Stat. 1941.

⁴⁰ Sec. 192.06(9), Fla. Stat. 1941.

⁴¹ Sec. 192.09, Fla. Stat. 1941.

⁴² Sec. 192.52, Fla. Stat. 1941.

gaged in the manufacture of particular articles, which last-mentioned exemption is for a limited period of time and is not effective after the end of the year 1948." There are also a number of limited exemptions which relieve from taxation property to the value of five hundred dollars, among these being property to the value of five hundred dollars belonging to every widow and to every person who is a bona fide resident of Florida who has lost a limb or been disabled in war or by misfortune;" and household goods and personal effects to the value of five hundred dollars belonging to the head of a family residing in Florida." There is also a law to the effect that real estate of every religious or charitable institution in Florida engaged in the support, maintenance and care of orphans and dependent children, shall be exempt from ad valorem taxes in a sum equal to five hundred dollars for each child cared for in such institution." The apparent purpose of this last-mentioned provision is to exempt certain property of orphan homes which would not be exempt under other statutory and constitutional provisions.

CONCLUSION

From the above discussion it is seen that the Legislature of Florida has been very liberal in allowing tax exemptions, and that the Supreme Court of Florida has been extremely liberal in construing the tax exemption laws. Each new Legislature adds to the tax machinery and in some instances the new parts added do not fit well and hinder rather than assist the orderly functioning of the machinery. Perhaps this situation could be remedied somewhat if the Legislature would enact a law providing for the appointment of a Tax Commission, or a Tax Board, or a Tax Council charged with the duty of making a study of the tax structure of the state, and of all proposed tax legislation. This Commission should be composed of attorneys experienced in the tax field and could

** Art. 9, Sec. 12, Fla. Constitution; *City of Jacksonville v. Continental Can Co.*, 151 So. 488.

** Art. 9, Sec. 9, Fla. Constitution; Sec. 192.06(7), Fla. Stat. 1941; Sec. 192.11, Fla. Stat. 1941.

** Art. 9, Sec. 11, Fla. Constitution.

** Sec. 192.07, Fla. Stat. 1941.

possibly work under the supervision of the Comptroller. The Commission could suggest the adoption of needed tax laws. All proposed legislative bills covering the field of taxation should be submitted to the Commission, which could make recommendations and re-draft the bills so that they will fit into the general tax scheme.