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SPECIAL COMMENT

RELIGIOUS PROPERTY TAX EXEMPTIONS IN KENTUCKY

BY PAUL J. WEBER*
AND JANET R. OLSON**

INTRODUCTION

As state and local governments across the nation face increasing financial pressures, officials have begun to search for new sources of revenue. At the same time, property owners have grown aggressively resistant to tax increases.¹ Although Kentucky has not yet witnessed major taxpayer agitation, it faces the same financial pressures. Consequently the large quantity of tax-exempt property, including religious property, is being pondered as a possible source of new revenue.² To provide the context for an investigation of possible state taxation of religious property, this article examines the development and extent of religious property tax exemptions in Kentucky.

I. KENTUCKY CONSTITUTIONAL PROVISIONS

A. *Provisions Regarding Church Property*

Kentucky's present constitution, adopted in 1891, contains the "no preference" clause from earlier constitutions in section 5:

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¹ U.S. NEWS & WORLD REPORT, Apr. 25, 1977, at 69-70; U.S. NEWS & WORLD REPORT, Jan. 17, 1977, at 81.

² Cf. Lile, *How Much Do We Know About Tax Exempt Property in Kentucky?* 4 PUBLIC AFFAIRS ANALYST NO. 11 (1977) (published by University of Kentucky Press). Projecting figures from Warren County to the entire state, Lile "guesstimates" that the value of exempt property in Kentucky is \$10,600,000,000. He assumes that 50% of the value of taxable real property is tax-exempt. In Warren County, 75% of the tax-exempt property is government owned.

No preference shall ever be given by law to any religious sect, society or denomination . . . nor shall any person be compelled to attend . . . [or] contribute to the erection or maintenance of any such place, or to the salary or support of any minister or religion³

The pertinent provisions for property tax exemptions are contained in section 170:

There shall be exempt from taxation public property used for public purposes; *places actually used for religious worship*, with the grounds attached thereto and used and appurtenant to the house of worship, *not exceeding ½ acre in cities or towns, and not exceeding 2 acres in the country*; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain . . . *and the income of such property as is used exclusively for their maintenance*; *all parsonages or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding ½ acre of ground in towns and cities and 2 acres of ground in the country appurtenant thereto . . .* and all laws exempting or omitting property from taxation other than the property above mentioned shall be void.⁴

B. *Historical Background*

Even in 1891, the religious property tax exemption was the subject of considerable debate. The corporation as a legal entity was still in its formative stage at the time of Kentucky's Constitutional Convention. Churches and religious organizations were considered corporations, and like corporations, were feared by the state's largely rural populace because of their rapid growth in urban areas.⁵

This fear was reinforced by the corporations' use of special permits from the General Assembly to escape taxation.⁶ In an attempt to curtail such practices by the legisla-

³ Ky. CONST. § 5.

⁴ Ky. CONST. § 170 (emphasis added). Note that the clause providing exemption for income-producing property used exclusively for the maintenance of certain institutions applies only to nonprofit cemeteries and charitable and educational institutions. It does not apply to religious organizations.

⁵ See 2 DEBATES CONSTITUTIONAL CONVENTION 2404-06 (1890) (hereinafter cited as CONSTITUTIONAL CONVENTION).

⁶ 1 CONSTITUTIONAL CONVENTION, *supra* note 5, at 1183-84, 1200-01 (remarks of Mr. Washington and Mr. Buckner). *But see id.* at 1197 (remarks of Mr. Beckner). Allegedly

ture, the Convention wrote into the constitution that "no property shall be exempt from taxation except as provided in this constitution."⁷ It was within this context that the religious property tax exemption became a part of the 1891 constitution.

C. *The Controversy Over Religious Property Exemptions*

On January 9, 1891, the Committee on Revenue and Taxation reported the following provision:

There shall be exempt from taxation public property used for a public purpose, *actual places of religious worship*, places of burial not held for private or corporate profit, and institutions of purely public charity; and all laws exempting property from taxation, other than the property above mentioned, shall be void⁸

The Convention discussed this section of the report from January 9th to January 14th, focusing primarily on the provision for religious property tax exemption.⁹ The arguments currently propounded on the religious exemption issue were nearly all advanced in the Convention debates.

The opposition to any religious exemption was led by Mr. Johnston of Fayette County, chairman of the revenue committee, who argued against exemption for any non-governmental property because "[a]n exemption is a tax levied on a part of the citizens who have no interest in it, for the benefit of others who have, on the whole State, for the advantage of a favored locality."¹⁰ Specifically, Johnston believed that these exemptions discriminated against those who had no interest in religious institutions, as well as against those who lived beyond the reach of services provided by charitable institutions. A reli-

more than \$232 million in corporate property escaped taxation because it was "devoted to a public purpose." See LEGISLATIVE RESEARCH COMMISSION, INFORMATIONAL BULLETIN No. 112, THE CONSTITUTION OF KENTUCKY xii (1976).

⁷ 1 CONSTITUTIONAL CONVENTION, *supra* note 5, at 1183, 1204. This limitation is currently in KY. CONST. § 3. See also *id.* at 1184-1203. While thus eliminating legislative power to exempt property from taxation, the language did not deny to local governments the power to grant special privileges such as exclusive contracts in order to encourage capital investment.

⁸ 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2372 (emphasis added).

⁹ *Id.* at 2372-2575.

¹⁰ *Id.* at 2382.

gious exemption, Johnston argued, amounted to a tax on the citizenry to support teachings which the taxpayers might believe to be "pernicious and wrong."¹¹

Johnston attempted to capitalize on the urban-rural conflict running throughout the Convention by intimating that the effect of the exemption would be to favor the cities at the expense of rural areas, since religious institutions were located mainly in the cities, and could result in an exemption for a quarter of all property in urban areas.¹² Nevertheless, Johnston concluded that a limited exemption for the buildings used for worship was essential to secure popular support for the constitution.¹³

Simon B. Buckner, delegate from Hart County and Governor of the State, opposed the exemption on different grounds, arguing that the government had no right to exempt the property of any corporation—not even a religious organization. He advanced the separatist argument: Kentucky was not a Christian government, but one which assured equal rights and privileges before the law to all religions.¹⁴ In addition, Buckner warned of the evils which historically have followed from vast accumulations of property in the hands of religious communities, and urged that taxation of church property was essential to avoid these evils. Finally, echoing Johnston's fee-for-services argument, Buckner concluded that all currently exempted organizations ought to pay for the protections given them by the State rather than throw their share of the burden on the whole people.¹⁵

On the other side of the argument, Ignatius A. Spalding, Catholic delegate from Union County, contended that the exemptions were justified as appropriate contributions by the state to the moral objectives of the churches, asserting further that the activities of the churches would otherwise have to be taken over by the state,¹⁶ an argument which was frequently advanced by supporters of religious tax exemptions.¹⁷ Since

¹¹ *Id.*

¹² *Id.* at 2383.

¹³ *Id.*

¹⁴ *Id.* at 2402.

¹⁵ *Id.* at 2404-07.

¹⁶ *Id.* at 2386-87.

¹⁷ See Bittker, *Churches, Taxes and the Constitution*, 78 *YALE L.J.* 1286 (1969).

government is prohibited from recognizing any particular religion and cannot accomplish religious objectives directly, Spalding continued, it falls within the province of religious societies to provide moral guidance.¹⁸ To tax religious organizations would destroy the good such organizations perform.¹⁹

Representative Thomas Pettit of Daviess County contended that the principle of separation of church and state precludes taxing the church.²⁰ Pettit also used a productivity rationale to argue that since church buildings yield no revenue for anyone they should not be taxed.²¹ By taxing churches, the government would discourage the contributions upon which churches rely: it would amount to a double burden on the people who contribute to their support. First they would contribute money to build and support a church, then they would have to contribute again to pay the taxes, resulting in a tax on charitable giving.²²

Less sophisticated arguments were propounded by Mr. Hendrick of Fleming County, who informed the Convention that the initiative to tax church property in the United States "originated in an infidel, free-thinking club in the city of New York,"²³ and a Mr. Durbin of Grayson County who added that "[t]he idea that churches are corporations, and should be taxed as such, is revolting."²⁴

The Convention delegates also debated whether or not to separate churches from other charitable institutions. Churches often have sponsored charitable organizations which, while not "purely public" in that they are not controlled by the public, dispense charity to all those qualified without regard to sectar-

¹⁸ 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2386. For a recent argument along these lines, see H. BERMAN, *THE INTERACTION OF LAW AND RELIGION* (1974).

¹⁹ 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2385-92.

²⁰ *Id.* at 2446.

²¹ *Id.* Historically property tax exemptions have been based on two main arguments: "productivity" and "benefits." Under the productivity rationale, property should be taxed in proportion to its actual income-earning ability. Under the benefit rationale, property should be exempted because the services such property provides would otherwise have to be offered by the state or would simply be unavailable. See Quigley & Schmenner, *Property Tax Exemption and Public Policy*, 23 PUBLIC POLICY 259-61 (1975).

²² 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2446-47.

²³ *Id.* at 2413.

²⁴ *Id.* at 2458.

ian boundaries. Some delegates felt that such church-related charitable institutions might not qualify under the term "purely public charity," and therefore needed explicit constitutional protection as religious institutions.²⁵ However, the Convention did not explicitly exempt religious charitable institutions and it was left to the courts to clarify what qualifies as a "purely public charity."²⁶

The Convention delegates also faced the task of defining the extent of the exemption, i.e., how much church property would be exempted from taxation. The delegates attempted to decide what constituted a reasonable amount of church property for purposes of exemption, and discussed varying this amount according to location, due to the difference in value between urban and rural properties. Mr. C. T. Allen of Caldwell County convinced the delegates that exemptions in the past had been excessive and that only non-revenue-producing property ought to be exempt. In addition, he reasoned, there should be limits on the amount of property a religious organization could own, which would preclude the possibility of such institutions owning unlimited amounts of revenue-producing property even if that income could be used only for religious or charitable purposes.²⁷ The potential disparity in the dollar amount of an exemption between larger, more ostentatious urban churches and their smaller, humbler, rural counterparts was the subject of considerable debate.²⁸

The Convention eventually adopted language virtually identical to the language of the present section 170 of the constitution.²⁹ Perhaps as a result of political expedience, their

²⁵ *Id.* at 2454.

²⁶ See *Iroquois Post No. 229 v. City of Louisville*, 309 S.W.2d 353 (Ky. 1958). The court held that "purely" modified "charity" and not "public." An earlier court had defined a "purely public charity" as one which dispenses a "duty which the Commonwealth owes to its indigent and helpless citizens." *Commonwealth v. Thomas*, 83 S.W. 572 (Ky. 1904).

²⁷ 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2451-52. In this regard it is interesting to note that the 1893 legislature passed a statute limiting the amount of property a religious society could own to 50 acres. 1893 Ky. Acts ch. 200, § 3 at 910. See note 31 *infra* for the text and history of this statute.

²⁸ McCracken County delegate W.G. Bullit argued that simple rural churches aid the Commonwealth in reducing crime more than the magnificent edifices of the city, since rural Sunday Schools drew children from the class of people most likely to turn criminal. 2 CONSTITUTIONAL CONVENTION, *supra* note 5, at 2459.

²⁹ *Id.* at 2575.

language went beyond the limited exemption proposed by Mr. Johnston, establishing the exemption as a basic principle of the Kentucky Constitution.³⁰

II. INTERPRETATION OF SECTION 170

By exempting only a small amount of church property, section 170 limits the ability of churches to accumulate land. Previously Kentucky had imposed a more direct limitation on the accumulation of land by churches. At one time, Kentucky limited church holdings of real property to fifty acres.³¹

This fifty-acre limitation was ineffective in preventing acquisitions and accumulation of property by churches in several situations. The statute only limited the accumulation of land. Thus, if a testator devised land to trustees with directions to pay rents and profits to certain churches, the statute applied; but there was no such restriction if the testator directed that the land be sold with the proceeds divided among certain churches.³²

The statute was also inapplicable when the benefit of a devise, gift, etc. inured to a charitable, rather than purely religious, purpose. Foreshadowing a similar outcome under section 170, the Kentucky Court validated a devise of realty to a church in trust for a particular charitable purpose.³³ Such de-

³⁰ The fundamental basis for the exemption was evident in statements like the one of J.D. Clardy of Christian County:

[W]hile some gentlemen have been in favor of exempting churches and school property, they have placed exemption . . . upon a ground upon which I am not willing to allow it to rest. They say that it is proper that all property of this kind should be taxed; but they are willing, as a matter of policy, that these particular things shall be exempted from taxation. I protest . . . I do not believe anything ought to be exempted from taxation as a matter of policy. *It ought to be exempted as a matter of right and justice or it ought not be exempted at all.*

Id. at 2453 (emphasis added).

³¹ 1893 Ky. Acts ch. 200, § 3 at 910 (codified at Ky. REV. STAT. § 273.090, repealed by 1968 Ky. Acts ch. 165, § 70) provided "[n]o church or society of Christians shall be capable of taking or holding the title, legal or equitable, to exceeding fifty acres of ground; but may acquire and hold that quantity for the purpose of erecting thereon houses of public worship, public instruction, parsonage or grave-yard."

For a listing of other restrictive statutes, see A. SCOTT, *THE LAW OF TRUSTS* § 362.4 at 2829 n.10, (3d ed. 1967).

³² *Street v. Cave Hill Investment Co.*, 230 S.W. 536 (Ky. 1921).

³³ *Spradlin v. Wiman*, 114 S.W.2d 1111 (Ky. 1938).

vises were permitted because of their charitable use, and thus the state was not engaging in a *primary function* of a religious organization, which would have been an impermissible activity.³⁴

Currently, the only restrictions on the ability of churches to accumulate lands are taxes on non-exempt church property, since the fifty-acre limitation was repealed in 1968.³⁵ Section 170 provides for taxation on all church property, exempting only "places actually used for religious worship" up to two acres, and residences of ministers up to two acres.³⁶ Like most tax exemptions, the religious exemption is strictly construed against the exemptee, with any doubt to be resolved in favor of the state.³⁷

However, section 170 exempts "institutions of purely public charity, and institutions of education not used or employed for gain."³⁸ The charitable and educational exemptions are broader in scope than the religious exemption because charities and schools "perform [a] function which relieves the taxpayers of a portion of their burden."³⁹ When a church uses property to provide such a service, that property may therefore be eligible for an exemption independent of the religious exemption.

Religious ownership does not disqualify church property from exemption as an institution of "purely public charity" or "education." Use, rather than ownership, is determinative in the application of this second section 170 exemption. In some situations, however, it is difficult to determine when religious property is being used for education or a purely public charity. It is clear that property used for advancement of religion does not qualify for such an exemption. For example, in *Commonwealth v. Thomas*, the Court held that a trust fund to be used "in the advancement of the principles of primitive Christianity, as taught by the Christian Church" was not a

³⁴ Bittker, *supra* note 17, at 1286.

³⁵ See note 31 *supra* for the history of the mortmain statute.

³⁶ Ky. CONST. § 170.

³⁷ *City of Ashland v. Calvary Protestant Episcopal Church*, 278 S.W.2d 708, 710 (Ky. 1955); *Trinity Temple Charities, Inc. v. City of Louisville*, 188 S.W.2d 91, 94 (Ky. 1945).

³⁸ Ky. CONST. § 170.

³⁹ *City of Louisville v. Presbyterian Orphans Home Soc'y*, 186 S.W.2d 194, 199 (Ky. 1945).

purely public charity and thus not exempt from taxation.⁴⁰ To be sure, the trust was a charity, but did not meet the standard for a purely public charity, i.e.: "one which discharges, in whole or in part, a duty which the commonwealth owes to the indigent and helpless citizens."⁴¹ There is no such duty on the part of the commonwealth to teach or disseminate religion, and thus the advancement of religion cannot be a "purely public charity." In addition, the Court noted that it would be "entirely useless to specify the exemption of a house of worship, and the parsonage, if all church property is exempt under the general expression 'purely public charity.'"⁴² Thus, property held by a church to produce income for the advancement of religion is fully taxable,⁴³ but property owned by a church which produces income for a school is exempt.⁴⁴

The taxation of religious property is determined by the same criteria as the applicability of the now repealed statute which had limited total church holdings. Property used for the advancement of religion is subject to the acreage limitation of the section 170 religious exemption just as it was formerly subject to the fifty-acre limitation.⁴⁵ However, religious property held to discharge an educational or financial (charitable) obligation of the state receives an exemption from taxation totally independent of the limited religious exemption of section 170.⁴⁶

III. RECENT TRENDS TOWARD MODIFICATION OF THE RELIGIOUS EXEMPTION

A. *Attempted Constitutional Revision*

A Constitutional Revision Assembly began drafting a new constitution in 1964. Although Kentucky has not had a new constitution since 1891, and has experienced considerable de-

⁴⁰ 83 S.W. 572 (Ky. 1904).

⁴¹ *Id.* at 573.

⁴² *Id.* at 574.

⁴³ See *City of Ashland v. Calvary Protestant Episcopal Church*, 278 S.W.2d 708 (Ky. 1955); *Calvary Baptist Church v. Milliken*, 147 S.W. 12 (Ky. 1912); *Broadway Christian Church v. Commonwealth*, 66 S.W. 32 (Ky. 1902).

⁴⁴ KY. OP. ATT'Y GEN. 65-767 (1965).

⁴⁵ Religious use is the important criterion. Thus when a church rents property to another church, the exemption applies if the property is used for religious purposes. KY. OP. ATT'Y GEN. 65-825 (1965).

⁴⁶ *Church of the Good Shephard v. Commonwealth*, 202 S.W. 894 (Ky. 1918).

mographic, economic, and social changes since that time,⁴⁷ the draft constitution submitted to the voters in 1966 was overwhelmingly rejected.⁴⁸

After considering several proposals to increase, decrease, or drop altogether the maximum holdings limitation for religious organizations, the Assembly retained the existing acreage exemptions.⁴⁹ The Assembly decided to let the present section 170 stand unchanged on the basis that all income-producing property, including that held by churches, is already, and should be, taxed.⁵⁰ While this reasoning is true for strictly religious organizations, income-producing property which is devoted to non-profit charitable or educational institutions enjoys a tax-exempt status.

Perhaps another reason that the provisions of section 170 were left unaltered by the Assembly was the fact that revenue from property taxes no longer formed a substantial portion of Kentucky's total state government revenue. Whereas property taxes had provided fifty-eight percent of Kentucky's total revenue in 1920, they provided only six percent in 1950.⁵¹ Before 1936, two-thirds of the state's general revenue resulted from property taxes and a three percent sales tax. An attempt was made to relieve the state's taxpayers of the property tax burden between 1934 and 1936. Unequal assessments and declining property values had increased property tax burdens during the Depression and alternative revenue sources were used to replace the property tax.⁵² While local governments still derive most of their revenue from property taxes, the Assembly decided not to raise once again the controversial issue of religious tax exemptions.

⁴⁷ For example, in 1890 only 19.2% of Kentucky's population lived in urban areas, but by 1960 the urban population was 44.5% of the total. LEGISLATIVE RESEARCH COMMISSION, INFORMATIONAL BULLETIN No. 52, A COMPARISON . . . THE PRESENT, THE PROPOSED KENTUCKY CONSTITUTIONS 58 (1966).

⁴⁸ Louisville Courier-Journal, Nov. 9, 1966, § A, at 1, col. 6.

⁴⁹ LEGISLATIVE RESEARCH COMMISSION, *supra* note 47, at 75-76.

⁵⁰ *Id.* at 76.

⁵¹ LEGISLATIVE RESEARCH COMMISSION, RESEARCH PUBLICATION No. 18, TAXATION—PROPERTY TAXES 1 (1951).

⁵² LEGISLATIVE RESEARCH COMMISSION, RESEARCH PUBLICATION No. 15, TAXATION—THE OVER-ALL PICTURE 4-5 (1951).

B. 1972 Senate Resolution

More recently, churches have been taking a hard look at their own policies on the subject of taxation. Several church policy statements contain recommendations that churches not seek exemptions from property taxes other than for property used primarily for religious purposes, and that churches should be willing to pay their share of the cost of the municipal services they receive, such as fire, police, and sanitation services.⁵³ One of these policy statements notes that regardless of the theoretical premises of tax exemption for religious institutions, exemption from taxation is not justified to the extent of the cost to the government of such services, and preferential treatment as to some property is unfair to other institutions.⁵⁴ Another statement recommends that their congregations "make appropriate contribution, in lieu of taxes, for essential services provided by government" in order to extricate the church from a position of obligation to the state by virtue of special tax privileges extended to it.⁵⁵

A number of these policy statements base their recommendations on the view that religious freedom requires that the government show no favoritism to any religious group. Discrimination in favor of churches in the matter of taxation and discrimination against religious groups are viewed as being equally pernicious.

However, the various policy statements on the whole favor a more generous religious tax exemption than is allowed by the constitution of Kentucky. For example, the Baptist Joint Committee on Public Affairs Conference issued a statement that

⁵³ NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S., TAX EXEMPTION OF CHURCHES, §§ 34.11-.13 (May 2, 1969).

Also in this connection, see the various policy statements which appear in A. BALK, THE RELIGION BUSINESS 57-96 (1968), which includes the following: National Council of Churches' Study Conference Report (1964); Methodist Church Study Commission Report (1968); United Presbyterian Church in the U.S. Special Committee Report (1963); American Lutheran Church Policy Statement (1966); Guild of St. Ives Report (1967); Baptist Joint Committee Conference Report (1960); and statements of the Catholic Press (1964-1967).

⁵⁴ BALK, *supra* note 53, at 58 (Report of the National Study Conference on Church and State).

⁵⁵ *Id.* at 61-66 (Report of a Study Commission on the Methodist Church and Church-Government Relations). For a contrary view, see D.M. KELLEY, WHY CHURCHES SHOULD NOT PAY TAXES (1977).

“[d]enominational offices should be exempt inasmuch as they are a valid extension of the work of the local church,” and that parking lots should be exempt unless used to produce income.⁵⁶

In 1972, religious leaders in Kentucky were successful in their efforts to get a resolution on religious property tax policy passed by the Kentucky Senate. In part the resolution states that section 170 of the constitution does not adequately provide for the “modern church with its place for religious worship, education, charity, recreation, administration, and parking,” and that the changes necessary to meet these requirements of the church “would not decrease the tax revenue for the government since the churches are not now taxed.”⁵⁷ The resolution states that the religious tax exemption in section 170 should “cover the exemption of places owned by religious institutions and used for religious, educational, charitable or administrative purposes, including the grounds attached thereto.”⁵⁸ The resolution was an attempt to extend the religious tax exemption to property used for religious purposes.

However, “religious purposes” is not a phrase used in the constitutional provisions for exemption. Section 170 is very explicit in allowing exemption only for the places of worship and the ground attached thereto, within certain acreage limitations, and for the home of the minister, again with acreage restrictions. In addition, notwithstanding the wording of the resolution, it seems clear that property tax revenues would have decreased if the resolution had become law, since the resolution not only eliminated the acreage restrictions, but also enlarged the scope of exempted property by including places used for administrative purposes.

In any event, the resolution had no capacity to change the wording or effect of section 170. It merely expressed the mind of the 1972 legislature on the subject of church property tax exemptions. The Very Reverend Charles Maloney, auxiliary bishop of the Catholic Archdiocese of Louisville and one of the backers of the resolution, felt that the resolution was of value mostly to the educational institutions with connections to ex-

⁵⁶ BALK, *supra* note 53, at 78 (Conference Report—Baptist Joint Committee on Public Affairs).

⁵⁷ Ky. S. Res. 39, reprinted in KY. SENATE JOURNAL, 625-26 (1972).

⁵⁸ *Id.*

empted religious organizations.⁵⁹ However, those institutions are already exempt under the broader and more liberal provisions of section 170 relating to charitable and educational institutions. The resolution may well have been a model for a later proposed constitutional amendment to section 170, which used essentially the same language as that found in the resolution.

C. *Attempted Constitutional Amendment*

The 1972 Assembly of the Kentucky Council of Churches authorized the formation of a task force on church property taxation, which was constituted in August 1972. The task force recommended to the 1973 Assembly of the Kentucky Council of Churches that a constitutional amendment be submitted to the General Assembly. The amended section 170 would alter the acreage limitation, and extend the permissible uses for exempt property:

[P]laces owned by religious societies and actually used for religious worship with the grounds attached thereto and used and appurtenant to the house of worship, *not exceeding seven acres; places owned by religious societies and actually used for educational, charitable or administrative purposes, including the grounds attached thereto . . .*⁶⁰

The reason given by the task force for the attempted amendment was the "present inconsistent approach to church taxation in Kentucky by local tax commissions."⁶¹ The task force did not make clear whether the "inconsistent approach" was among tax commissions of different localities, tax commissions in the same locality at different points in time, or whether the term referred to the fact that exemption for religious property is dealt with differently from the charitable and educational exemptions. The annual review of all real property exempt under section 170, required by statute,⁶² is a possible source of the inconsistency.

Nevertheless, in April 1974, after a meeting with then Gov-

⁵⁹ Telephone interview with Bishop Maloney (Feb. 15, 1977).

⁶⁰ Minutes of the Joint Meeting of the Task Force of Church Property Taxation—Kentucky Council of Churches (Dec. 17, 1973) (emphasis added).

⁶¹ *Id.*

⁶² KY. REV. STAT. § 132.220 (5), (6) (1971).

ernor Ford, the task force agreed that the proposed constitutional amendment should not be pursued at that time. The Governor had suggested several reasons for delaying, among which were the need for a major publicity campaign before continuing with the amendment procedure, the opposition of the labor force at the time to tax exemption for any group,⁶³ and the poor track record of constitutional amendments previously presented to Kentucky voters.⁶⁴ Church leadership was fearful that failure of the proposed amendment would be taken by tax assessors as a mandate to add more church property to the tax rolls. The decision not to proceed with the amendment was supported by the Catholic Archdiocese of Louisville, which stated that the "best counsel that our office has been able to find has advised against attempting to clarify our status by means of an amendment because we are not likely to succeed and because of the danger that we will lose the exemption that we are now accorded."⁶⁵

CONCLUSION

The foregoing discussion shows that it was the intention of the framers of the Kentucky Constitution, after lengthy and sophisticated debate, that religious institutions be treated as distinct from charitable or educational institutions regarding property tax exemptions and that religious property tax exemptions be extended as a matter of right, not merely as acceptable policy. The courts have consistently enforced this intent and the wording of the constitution precludes any further extension of tax exemptions by state and local statutes and ordinances.

In view of the increased demands upon state and municipal governments to provide more services for more people and the consequently rising cost of government, it is unlikely that Kentucky will abandon its practical attitude in this area. The

⁶³ Minutes of the Task Force on Church Property Taxation—Kentucky Council of Churches (Apr. 25, 1974).

⁶⁴ There have been 53 attempts to amend the constitution since its adoption in 1891. Only 22 have been successful. LEGISLATIVE RESEARCH COMMISSION, *supra* note 6, at i.

⁶⁵ Letter from the Catholic Archdiocese of Louisville (Nov. 24, 1974). A copy of this letter was kindly made available to the author by the Catholic Archdiocese.

“fee for services” trade-off emphasized at the Constitutional Convention requires balancing church services against the need to maintain a broad tax base.

Religious organizations with charitable or educational branches enjoy a tax-exempt status for those branches unrestricted by use or acreage limitations. This is justified by the services to the community such institutions provide. To provide this broad exemption for religious societies which do not provide such services the courts must find that they are charitable institutions in and of themselves, or that the services they provide, such as moral education and the dissemination of values, are of a charitable or educational nature. Kentucky courts are reluctant to stretch section 170 to such an extent, so that the only chance for these institutions to acquire a broader exemption is through amendment of section 170 or revision of the entire constitution. Either process would require a massive educational campaign to convince the voters of the virtues of such a course of action.

It is in Kentucky’s best interests to retain the provisions of section 170 as they now stand. Section 170 leaves a sufficiently broad tax base. If one accepts the rationale that services provided by institutions enjoying tax-exempt status would otherwise have to be provided by government, the exemptions contained in section 170 are reasonable and justified. To accord to religious organizations as such the treatment accorded charitable and educational institutions would tend to eliminate a great amount of property from the tax base at a time of rising demand for municipal services and rising costs. Such a course of action would be both fiscally and politically unsound.