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EXEMPTION OF COLLEGE FRATERNITY PROPERTY FROM TAXATION.

The quarter of a century since the year nineteen hundred has witnessed a remarkable growth of Greek letter fraternities in the colleges and universities throughout the country. Many new fraternities have been founded and practically all of the older ones have increased the number of their chapters. The acquisition of property by the various chapters of the fraternities for dormitory and recreational purposes has kept pace with and even forged ahead of the growth of the fraternities themselves. Millions of dollars are now invested in fraternity property, a very large per cent of which is invested in chapter houses.

Should this fraternity property be exempt from taxation? It will not be the purpose of this article to set out the answer to this question, instead, its purpose will be to treat with the development of the law from legislative enactments and the decisions of the courts in construing the same.

The first case directly involving the exemption of Greek letter fraternities from taxation was that of *Delta Kappa Epsilon Society v. Lawler*¹ decided in 1902. In this case the referee found that the primary purpose of the fraternity was to afford the members of the fraternity owning it with an abiding place while attending college. The referee said, "It is there that they eat and sleep; it is there that they mingle with each other in social intercourse; it is there that they entertain their friends, and to that end indulge in dancing and other similar amusements. In short it is to all intent and purpose a club house, a place for rest and recreation, and fraternal intercourse, rather than for the purpose for which it is claimed to have been organized, which purposes are plainly secondary and incidental." In view of the finding of the referee the Supreme Court of that state (New York) held that the real property of the society was not exempt from taxation under the statute,² which provided that: "The real property of a corporation or society organized exclusively for the moral or mental improvement of men or women or for

¹ 74 App. Div. 553, 77 N. Y. Supp. 840; affirmed without opinion in 179 N. Y. 553, 71 N. E. 1136.

² Laws of 1896, c. 908, as amended by Laws of 1897, c. 371 (N. Y.)

. . . educational, scientific, library, (or) literary . . . purposes . . . or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes, and the personal property of any such corporation shall be exempt from taxation.”

In 1903 the Supreme Judicial Court of Massachusetts decided the case of the *Phi Beta Epsilon Corporation v. City of Boston*³ which involved the question of exemption from taxation of the real estate of the local chapter of that fraternity. In the course of its opinion the court said, “The housing or boarding of students is not of itself an educational process, any more than is the housing or boarding of any other class of human beings. The nature of the process so far as respects its educational features, is not determined solely by the character of those who partake in its benefits.” The court held that the property in controversy did not fall within the statute⁴ since its dominant use was for a dormitory or a boarding house, and was in no way necessary or convenient for such slight and incidental educational or scientific instruction as was furnished by the society. The facts of this case show that the chapter house was built on land belonging to the university.

Under the statute⁵ of the state of Maine which exempts from taxation, “The real estate of all literary and scientific institutions occupied by them for their own purposes or by an officer thereof as residence,” the Maine Alpha chapter of the Sigma Alpha Epsilon Society claimed exemption. The facts show that this Greek letter fraternity in accordance with its charter rights, erected upon land owned by the fraternity, a frame chapter house building, with properly equipped dining room, kitchen, study and sleeping rooms, and the like; and that the building was used by university students who were members of an unincorporated chapter of the fraternity, and who had entire charge of it as a home where they lived while attending the university. No officer or professor of the university lived in the house, or had any control other than that exercised over the general student body, and the maintenance expenses were divided among

³ 182 Mass. 457, 65 N. E. 824.

⁴ Public St., c. II, sec. 5, cl. 3.

⁵ Revised St., 1903, c. 9, sec. 6.

the chapter members. The court in its decision⁶ rendered in 1909, held that the purpose of the fraternity was neither literary nor scientific, but rather domestic, in the nature of a private boarding house, and that it was subject to taxation as a chapter house. In 1911 the same court under practically the same state of facts in deciding the case of the *Inhabitants of Orino v. Kappa Sigma Society*⁷ upheld their former decision.

In 1914 the Supreme Court of Kansas in the case of *Kappa Kappa Gamma House Ass'n. v. Percy*⁸ construed the statute⁹ which provided, "that all real estate not exceeding one-half acre in extent and the buildings thereon situate and used exclusively by any college or university society as a literary hall or as a dormitory, if not leased or otherwise used with a view of profit, and all books, etc., belonging to such society, shall be exempt from taxation," as to include Greek letter fraternities. In this case a society of students in the state university obtained money for the erection of a building and organized a corporation to act as trustee for the society. The building was used as a literary hall and dormitory. The court held that it was not essential to an exemption that the title to the property should be in the society; and that "Use and not ownership, is the test of the exemption." The court here cited with approval the case of the *City of Louisville v. Werne, et al.*,¹⁰ where a church organization leased property and was using it for religious purposes and an attempt was made to subject the property to taxation, and in which the Kentucky Court of Appeals ruled that: "The Constitution does not make the exemption depend upon the title . . . it is the use of the property and not the ownership, which determines the question of exemption." In the Kappa Kappa Gamma case, it was urged that the membership was limited, and that not all young women who attended the university could gain admission to the society and receive the benefits of the exemption. To this the court said, "All young women who are students at the university may not be able to gain admission to the Kappa Kappa Gamma Society, but . . . other

⁶ 105 Me. 214, 74 Atl. 19.

⁷ 108 Me. 320, 80 Atl. 831.

⁸ 92 Kans. 1920, 142 Pac. 294, 52 L. R. A. (N. S.) 995.

⁹ General St. 1909, sec. 9128 (Kans.)

¹⁰ 25 Ky. Law Rep., 2196, 80 S. W. 224. Also *State ex rel. v. Magurn*, 187 Mo. 238, 86 S. W. 138, 2 Ann Cas. 808.

similar societies may be organized without limit by the students so that all may have adequate dormitory facilities." The court further said, "The fact that the chapter house is not open to the public or to any one who may apply for admission does not deprive the society of the statutory exemption."

In *State v. Allen*¹¹ decided in 1920 the DePau chapter of Phi Kappa Psi claimed to be exempt from taxation under the Indiana statute¹² which provided: "That any part, parcel or tract of land not exceeding one (1) acre and the improvements thereon, and all personal property, owned by any Greek letter fraternity, which is connected with any college, university or other institution of learning, and under the supervision thereof, and which is used exclusively by such Greek letter fraternity to carry out the purposes of such organization shall be exempt from taxation." The court sustained the claim of the fraternity, and held that its property was exempt from taxation, even though some of the members of the fraternity boarded and slept at the house; such use not making it dominantly a lodging and boarding house. It was further ruled in this case that the word fraternity, in its generic sense, included sororities.

The Supreme Court of Illinois in the case of *Knox College v. Board of Review of Knox County*,¹³ decided in 1923, held that since fraternity houses were not indiscriminately used by all students of the college but, on the contrary, open only to members of the respective fraternities, not by virtue of their college attendance, but only upon election to membership in such fraternities under rules established by the societies themselves, were not exempt from taxation as dormitories but were subject to taxation. Justice Carter in delivering the opinion of the court said, "Because some advantage might accrue to the college by the fraternities furnishing accommodations for the students, thus lessening the need for dormitories, and because the contractual relations between the fraternities and the college made these buildings mutually advantageous to the college and the students, that does not change the fact that they are fraternity houses not unconditionally open to all students and not ostensibly or actually used exclusively for educational purposes."

¹¹ 127 N. E. 145 (Ind.).

¹² Burns' An. St. 1914, sec. 10150.

¹³ 139 N. E. 56.

In *Beta Theta Pi Corporation v. Board of Commissioners of Cleveland County*,¹⁴ decided by the Supreme Court of Oklahoma in 1925, it was admitted that the fraternity was exempt from taxation under the statute,¹⁵ but the commissioners contended that since this particular class of property was not enumerated in the Constitution¹⁶ as being exempt it should not be exempted. The court ruled that the property of the fraternity was exempt under the statute; and said, "It is immaterial what name the institution, organization, or society may bear, or who may own the property in question, but it is the use to which the property is dedicated and devoted which constitutes the test whether it is exempt. The question of use in all such cases is necessarily a question of fact to be established by the evidence."

The Supreme Court of Tennessee in an unofficial opinion¹⁷ has ruled that fraternity houses in that state are exempt from taxation. It is likely that the courts in other states have also, in the absence of specific statutes, exempted such property. It is well to note that all the cases set out above came before the respective courts on the construction of statutes in those jurisdictions.

Summing up the cases discussed it will be seen that in one state only did the statute specifically designate Greek letter fraternities. In two of the states the courts construed the statutes so that they included Greek letter fraternities. In four of the states the courts gave literal constructions to the statutes and ruled that they did not include such societies.

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¹⁴ 234 Pacific 354.

¹⁵ 9580 Comp. St., 1921 (Okla.).

¹⁶ Art. 10, sec. 6 (Okla.).

¹⁷ *Case of Phi Delta Theta*, not reported.