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Taxation: Exemption of Property Owned by Educational Institutions in California

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In the case of *Steele v. Louisville & Nashville Ry. Co.*,[26] it was noted by the United States Supreme Court that the bargaining authority conferred upon a union under the Railway Labor Act was not unlike the power of a legislature. It may govern the working life as effectively as a legislature may control living conditions in general. It should therefore be subject to the same constitutional limitations. Reasonably, it would not have to be shown that the union exercising the bargaining power was the exclusive agent under the terms of the Wisconsin Employment Peace Act or similar labor legislation since, as was noted in the dissenting opinion of the *Ross* case:

> ". . . the plain facts of economic life demonstrate that the possibility of so small a minority forming as an effective organization when the defendant is already established in the field is illusory."[27]

Wherever a union is established, workers may be bound by a union arbitration.[28] Their grievances might necessarily be settled by union representatives.[29] They might even be victims of conscious or unconscious discrimination on the part of the employer seeking the favor and good will of the union. Yet, they might still be unreasonably kept from taking part in, or voting for, the formulation of the policies which govern them. This is the wrong which should be remedied.

The court having based its decision upon a concept of a union as a voluntary association whose acts are not such as to be termed state action, it should be submitted as a conclusion that a different and a better result might have been reached by a more realistic view of what the functions of a union are. There should have been a less rigid view of what constitutes state action in which the essential public nature of the union was emphasized. The stress should have been placed on the source of power and authority of the union rather than upon its individual and private aspects as an organization.

T. C. Black

TAXATION: EXEMPTION OF PROPERTY OWNED BY EDUCATIONAL INSTITUTIONS IN CALIFORNIA

The determination of which property owned by educational institutions is exempt from California property tax requires an interpretation of section 1a, article XIII of the California Constitution which reads as follows:

> "Any educational institution of collegiate grade, within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding 100 acres in area, its securities and income *used exclusively* for the purposes of education." (Emphasis added.)

How encompassing is this provision? Should the exemption extend to property other than the actual buildings in which instruction is carried on?

The District Court of Appeal of California in the case of *The Church Divinity School of the Pacific v. County of Alameda*[1] held that faculty residences, student

[26] 323 U.S. 192 (1944).
[27] *Supra* note 1 at 530, 82 N.W.2d at 322.
[28] WIS. STAT. § 111.06 (1953).
[29] *Ibid.*
[1] 152 A.C.A. 534, 314 P.2d 209 (1957).

parking lots and married students' residences were within the exemption as stated in the constitutional provision. The court, in examining the constitutional provision, determined that a requirement of exemption is the necessity that the grounds, buildings and equipment be *"used exclusively for the purposes of education."* The court reached this conclusion by holding that this exemption afforded educational institutions is analogous to that given welfare and religious institutions in section 1c, article XIII of the California Constitution.[2] In previous cases[3] the Supreme Court of California has interpreted the provision applicable to welfare and religious institutions to make exempt all property "used exclusively" by such institutions. There is little doubt that this is a correct construction of the phrase in the welfare and religious provision which reads:

> ". . . the Legislature may exempt from taxation all or any portion of property *used exclusively* for religious, hospital or charitable purposes . . .", (emphasis added).[4]

Therefore, the California Supreme Court, in deciding exactly what property was to fall under the exempting provision as "used exclusively for religious, hospital or charitable purposes," used a "strict but reasonable" rule and broader interpretations.[5]

The court applied this analogy in holding that the property in question would be exempt from taxation[6] as there had been no prior California decision interpreting the educational provision. In applying this interpretation by analogy, however, the court failed to examine the differences in grammatical construction between the two provisions or their underlying intent. The court merely assumed that the term was to be interpreted the same way in both provisions, and cited cases to show that "used exclusively" was liberally interpreted in the welfare provision so as to favor the exempting of as much property belonging to religious and welfare institutions as possible. If the court had examined differences between the two provisions, it might have found a sounder basis for its decision.

In a recent article,[7] Mr. F. E. Loy presented the basis of a distinction between the two provisions and an interpretation of the provision appertaining to educational institutions.

Mr. Loy posed the following question: Is it required that college property in California be "used exclusively for the purposes of education" to be exempt under the constitution? It should be noted here that the court in the principal case did not make this inquiry since it applied "used exclusively" to the entire educational provision, and the only question thus presented was that of interpreting what property was so used so as to come within the statute.

Mr. Loy then presented his reasoning for suggesting that college property need not be "used exclusively for the purposes of education" to be exempt under the constitutional provision. First of all, a close examination of the grammatical con-

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[2] ". . . the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

[3] Lundberg v. County of Alameda, 46 Cal. 2d 644, 298 P.2d 1 (1956); Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal. 2d 729, 221 P.2d 31 (1950).

[4] CAL. CONST. art. XIII, § 1c.

[5] 152 A.C.A. at 538, 314 P.2d at 212.

[6] *Ibid.*

[7] F. E. Loy, *Tax Exemption of College Property in California,* 31 L.A.B. BULL. 99 (1956).

struction of the educational provision should be made to determine how "used exclusively was meant to be applied. In the provision that

> "[educational institutions] shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding 100 acres in area, its securities and income *used exclusively* for the purposes of education." (Emphasis added.)

Mr. Loy contends that a comma would be needed between the words "income" and "used" to correctly apply the "used exclusively" clause to the entire section. As the section now stands, it could reasonably be interpreted two ways: as exempting all property of educational institutions, and that income derived from any source which is used exclusively for the purposes of education, or as exempting only property used exclusively for the purposes of education. In other words, the "used exclusively" clause could apply to all of the nouns—"buildings and equipment," "grounds," "securities" and "income," or merely to "income" alone. Since, as has been shown previously, the "used exclusively" clause in the welfare provision does apply to all property owned by the institutions, the two sections are not similar enough to apply the interpretation of one to the other automatically as was done by the court.

The two possible interpretations of the educational provision indicate that an ambiguity is present. When such is the case in a constitutional provision or in a statute, it is necessary to look to the intent of the legislators at the time they enacted the provision.[8] The provision in question was enacted in 1914. Prior to that time, there was no tax exemption in California which applied to educational institutions generally. However, special acts had been passed by the legislature granting exemptions to individual educational institutions. All of these special acts exempted property of the particular school involved, *regardless* of the use to which the property was put (with the exception of certain properties of Stanford University). There were a number of educational institutions which were not covered by these special acts. As was pointed out in the opinion in the principal case,

> "One of the purposes of the 1914 amendment was to treat all colleges in the same manner and abolish discrimination in favor of certain institutions."[9]

Thus, if the intent of the legislature was to put all educational institutions on an equal footing with those already provided for, the purpose of the provision would *not* be to exempt only property "used exclusively" for education, but *all* property of educational institutions, because all the property of those institutions already provided for was exempt from taxation. The intent of the legislature could also have been to provide equal exemptions for all educational institutions by only holding exempt that property "used exclusively for the purposes of education." This is possible, but the bringing of the schools in line with those already exempt seems more plausible, due to the desire of the legislature to encourage education by granting as liberal tax exemptions as possible, which is accomplished by exempting *all* property owned by educational institutions, with the only qualification being that the income derived from that property or from any other source must be used exclusively for the purposes of education in order to be exempt from taxation.

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[8] 2 SUTHERLAND, STATUTORY CONSTRUCTION 319 (3d ed. 1943).

[9] 152 A.C.A. at 539, 314 P.2d at 213.

The court in the principal case effects the same result as that arrived at by Mr. Loy. In doing so, however, the court was required to give a rather broad interpretation of the phrase "used exclusively" in the light of decisions in other jurisdictions. In the jurisdictions with a "used exclusively" clause applying to all property belonging to educational institutions, a strict interpretation is given to that clause, noticeably in regard to faculty residences, which were not considered as used exclusively for the purposes of education.[10] Legal writers have recently criticized two of the latest cases as giving the "used exclusively" clause too narrow an interpretation since, they argue, it is desirable to encourage educational institutions as much as possible through tax exemption because of their importance in terms of public and social policy.[11] In jurisdictions where the only requirement for exempting property belonging to educational institutions is that the property be owned by the institutions, courts have had no trouble exempting the types of property in question here.[12] Therefore, it appears that if the court in the principal case had based its decision on the reasoning presented by Mr. Loy, there would have been no need for the interpretation made of the "used exclusively" clause whereby it was required to determine whether the different types of property were "used exclusively for the purposes of education." The court would also have found a great deal more support from other jurisdictions. There has been some sentiment expressed that the "used exclusively" clause should be given a broad interpretation when applying it to educational institutions, but it seems wiser for the court's basis for its decision to be one well grounded in the law of other jurisdictions than to go contrary to the great weight of authority, when there is a choice.

There are no previous decisions in California interpreting this particular section of the Constitution, and it would seem desirable to find a more substantial foundation for the decision than that given in the opinion of the court. The two main bases for the decision appear rather weak. First of all, the greatest weight in the opinion is given to California cases interpreting the section exempting welfare and religious institutions from taxation. This analogy, we have seen, is not well founded. Secondly, the majority of cases cited from other jurisdictions can easily be distinguished from the present case, either based on statutory or factual differences.[13] It would be much more desirable to give the interpretation that the "used exclusively" clause applies only to "income," and thus the provision would exempt all property from taxation owned by educational institutions. This interpretation of the constitutional provision is a plausible one, and in applying this

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[10] New Canaan County School v. New Canaan, 183 Conn. 347, 84 A.2d 691 (1952); Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 497 (1950); Knox College v. Board of Review of Knox County, 308 Ill. 160, 139 N.E. 56 (1923).

[11] Notes, 26 CONN. B.J. 219 (1952), *criticizing* New Canaan County School v. New Canaan; 25 N.Y.U.L. REV. 916 (1950), *criticizing* Western Reserve Academy v. Board of Tax Appeals.

[12] Troy Conference Academy v. Poultney, 115 Vt. 480, 66 A.2d 2 (1949); Elder v. Trustees of Atlanta University, 194 Ga. 716, 22 S.E.2d 515 (1942).

[13] Examples of the differentiations: Midwest Bible and Missionary Institute v. Sestric, 364 Mo. 167, 260 S.W.2d 25 (1953) (buildings used both as dormitories and as faculty residences, so students had immediate access to faculty, and faculty had supervision over students); People *ex rel.* Clarkson Memorial College v. Haggett, 191 Misc. 621, 77 N.Y.S.2d 182 (Sup. 1948) (the only case found in point regarding faculty residences. There was a statute similar to the court's interpretation of the California constitutional provision. The case admits that their interpretation is a long way from the literal application of the word "exclusively."); Missouri *ex rel.* Spillers v. Johnson, 214 Mo. 656, 113 S.W. 1083 (1908) (headmaster's living in school merely incidental to use of building as school; building held completely exempt).