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Real Extate Taxation of Fraternities and Faculty Houses

The argument for an exception in *Bethea*,[23] however, is clouded by the precise factual situation. The illicit relationship of the parties could be interpreted as having precipitated the assault, and it appears that the court justly deprived the defendant of any privilege of standing his ground. The privilege of standing one's ground should be reserved for those situations in which the assaulted party is in no way tainted with fault. Where the situation arises because of an improper relationship between the parties, the rule in regard to retreat by parties *at fault* rather than parties *not at fault* should be applied.

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REAL ESTATE TAXATION OF FRATERNITIES AND FACULTY HOUSES

The question of whether real property of tax-exempt educational institutions used for fraternity houses and faculty residences should be exempt from taxation involves the interpretation of state constitutional and statutory provisions. Exemptions of colleges from taxation, like all exemptions, should be strictly construed. At the same time, public policy dictates that every possible benefit be afforded to educational institutions.[1] Generally, it appears that college-owned property is more often exempt than subject to real property taxation.[2]

The recent case of *Denison University v. Board of Tax Appeals*[3] involved a question of tax exemption of fraternity houses constructed on land owned in fee simple by the University and leased to the fraternities. The Supreme Court of Ohio held that they were not "used exclusively for charitable purposes" within the purview of the tax exemption statute[4] and so were subject to taxation. The court found that members elected officers and socialized within the confines of their residences; and did not find persuasive the argument that the

[23]Ibid.

[1]Webb Academy v. City of Grand Rapids, 209 Mich. 523, 177 N.W. 290, 295 (1920); State v. Carelton College, 154 Minn. 280, 191 N.W. 400 (1923); Syracuse Univ. v. Murphy, 10 App. Div. 2d 468, 200 N.Y.S.2d 807 (1960).

[2]County of Hanover v. Trustees of Randolph-Macon College, 203 Va. 613, 125 S.E.2d 812 (1962). Note private schools do not need to duplicate programs of public schools in order to gain tax exemption, but the course of study needs to fit only the general scheme of tax supported schools. Illinois College of Optometry v. Lorenz, 21 Ill. App. 2d 219, 171 N.E.2d 620 (1961).

[3]173 Ohio St. 429, 183 N.E.2d 773 (1962).

[4]Ohio Rev. Code tit. 57 § 5709.07 (1958).

fraternities provided essential dormitory and restaurant facilities.[5] Generally, the *Denison* case is in accord with Ohio precedents involving tax exemption of charitable institutions.[6]

The courts in Ohio, as elsewhere, have not drawn any distinction between the tax-exempt status of fraternity and faculty houses. Denison University in the principal case relied heavily on the 1909 case of *Kenyon College v. Schnebly*,[7] in which the court upheld exemption of professors' houses on campus from taxation. However, the court found the decision not to be controlling since there had been a later constitutional change in Ohio. The tax exemption clause of the Constitution had been changed from "all public colleges, public academies, all buildings connected with the same and all lands connected with public institutions of learning not used with a view toward profit"[8] to "real . . . property belonging to the institutions that is used exclusively for charitable purposes shall be exempt from taxation."[9] The present Constitution bases tax exemption on the *usage* to which the property is put rather than its status of being owned by a nonprofit institution.[10]

Generally, state constitutions and statutory provisions regarding the exemption of fraternities and faculty housing from real property taxation fall into three classifications: (1)States requiring the property to be used "exclusively" for educational purposes in order to qualify for tax exemption; (2) States only requiring the property to be used "primarily" for educational purposes to so qualify; and (3) States with provisions not using either adverb, and so subject to a considerable range of judicial construction.

States requiring the property to be used "exclusively" for educational purposes[11] in turn tend to fall into two groups. The majority

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[5]173 Ohio St. 429, 183 N.E.2d 773, 775 (1962).

[6]Note, 1 W. Rec. L. Rev. 151 (1949); Note, 20 Cinn. L. Rev. 266 (1951). The Ohio legislature attempted, by amendment, to grant exemption to all property used by charitable institutions for income purposes. Ohio. Gen Code Ann. § 5353 1 (Page, 1937). The law was held unconstitutional. New Orphans' Asylum of Colored Children of Cincinnati v. Board of Tax Appeals, 150 Ohio St. 219, 80 N.E.2d 761 (1948).

[7]12 Ohio C.C.R. (N.S.) 1 (Cir. Ct. 1909), aff'd, 81 Ohio St. 514, 91 N.E. 1138 (1909).

[8]Ohio Const. art. 12, § 2 (1851), Ohio Rev. Stat. § 2732 (Bates, 1904).

[9]Ohio Const. art. 12 § 2 (1912), Ohio Rev. Code tit. 57, § 5709.07 (1962).

[10]Wehrle Foundation v. Evatt, 141 Ohio St. 467, 49 N.E.2d 52 (1943); Jones v. Conn., 116 Ohio St. 1, 155 N.E. 791 (1927); Benjamin Rose Institute v. Meyers, 92 Ohio St. 252, 110 N.E. 924 (1915).

[11]Ala. Code tit. 51, § 2(a) (1958); Ark. Const. art. 16, § 5; Cal. Const. art. 13, § 1 (a); Conn. Gen. Stat. Rev. § 12-81(7) (1958); Ill. Const. art. 9, § 3; Kan. Const. art. 11, § 1; Mich. Stat. Ann. § 7.7 (Henderson, 1940); Miss. Code Ann. § 9697(d)

view requires that the property be used solely and for no other purpose than that of education.[12] The minority extends exemption to all property used for education, is not limited to buildings used only for educational purposes in a strict or literal sense.

Under the majority view, of which Ohio is typical, the words are construed literally, and so these states are strict in granting the tax exemptions to both fraternities[13] and faculty houses.[14] Fraternities are considered to be for the use and enjoyment of their members, while their educational, charitable, and benevolent purposes are of secondary importance.[15] Faculty housing on campus provides an element of convenience to the professors, any educational or benevolent purpose again being of a secondary nature.[16] Construing the word "exclusively" literally, Ohio has denied tax exemption to the University of Cincinnati for vacant lots owned by the University, since no income from these lots was used for the endowment or support of the University.[17] Similarly, Ohio denied tax exemption to Western Reserve Academy for residences on campus belonging to the school,

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(1952); Mo. Const. art. 10, § 6; Neb. Const. art. 8 § 2; N.Y. Tax Law § 4, subd. 6(k); N.C. Gen. Stat. § 105-296(4) (1958); Ohio Const. art. 12, § 2, Ohio Rev. Code Ann. § 5709.07 (Baldwin, 1958); Ore Const. art. 18, § 7, Ore. Rev. Statute. § 307.130 (1958); R.I. Gen. Laws Ann. § 44-3-3(8) (1956); Tenn. Const. art. 2, § 28; Tex. Const. art. 8 § 2; Wis. Stat. § 70.11(4) (Supp. 1961) [exempts fraternities specifically].

[12]Annot. 66 A.L.R.2d 904 (1959).

[13]Knox College v. Board of Review, 308 Ill. 160, 139 N.E. 56, (1923); Theta Xi Bldg. Ass'n v. Board of Review, 217 Iowa 1181, 251 N.W. 76 (1933); Alpha Tau Omega Fraternity v. Board of County Comm'rs, 136 Kan. 675, 18 P.2d 573 (1933); Beta Xi Chapter of Beta Theta Pi v. City of New Orleans, 18 La. App. 130, 137 So. 204 (1931); Orno v. Sigma Alpha Epsilon Soc'y, 105 Me. 214, 74 Atl. 19 (1909); Phi Beta Epsilon Corp. v. City of Boston, 182 Mass. 457, 65 N.E. 824 (1903); Iota Benefit Ass'n v. County of Douglas, 165 Neb. 330, 85 N.W.2d 726 (1957); Rutgers Chapter Delta Upsilon Fraternity v. City of New Brunswick, 129 N.J.L. 238, 28 A.2d 759, aff'd, 130 N.J.L. 216, 32 A.2d 364 (1942); Albuquerque Alumni Ass'n v. Tierney, 37 N.M. 156, 20 P.2d 267 (1933); People ex rel. Delta Kappa Epsilon Soc'y v. Lawler, 74 App. Div. 533, 77 N.Y.S. 840, aff'd, 179 N.Y. 535, 71 N.E. 1136 (1902); Kappa Gamma Rho v. Marion County, 130 Ore. 165, 279 Pac. 555 (1929); Powers v. Harvey, 81 R.I. 378, 103 A.2d 551 (1954); Re South Dakota Sigma Chapter House Ass'n, 65 S.D. 559, 276 N.W. 258 (1937).

[14]Plattsburgh State Teachers College Benevolent and Educ. Ass'n v. Bernard, 9 Misc. 897, 170 N.Y.S.2d 712 (Sup. Ct. 1958); City of Hoboken v. Division of Tax Appeals, 136 N.J.L. 328, 55 A.2d 290 (1947); Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 497 (1950).

[15]Orno v. Sigma Alpha Epsilon Soc'y, 105 Me. 214, 74 Atl. 19 (1909); Phi Beta Epsilon Corp. v. Boston, 182 Mass. 457, 65 N.E. 824 (1903); People ex rel. Delta Kappa Epsilon Soc'y v. Lawler, 74 App. Div. 553, 77 N.Y.S. 840 (1902).

[16]Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 947 (1950.)

[17]University of Cincinnati v. Board of Tax Appeals, 153 Ohio St. 142, 91 N.E.2d 502 (1950).

in which certain members of the faculty were required to live for the purpose of entertaining students and their parents.[18]

Under the minority view, of which Illinois is typical, the word "exclusively" is construed liberally, and so these states are more lenient in granting tax exemptions.[19] These courts only require that the occupancy by the instructor or the Greek letter fraternity further the purpose for which the college was organized.[20] *In City of Chicago v. University of Chicago,* Illinois granted tax exemption to a social, club, in which members paid dues.[21] Even though the club existed for the social benefit of the students living there, its uses were considered important in carrying out the educational purposes of the University. The Supreme Court of Illinois thought the dormitory and restaurant purposes were sufficient educational objective to accord tax-exempt status. Construing the word "exclusively" loosely, Illinois granted tax-exemption to the University of Illinois Foundation for buildings which afforded recreational facilities to the students, notwithstanding a charge was made for room rent, meals, and other services;[22] and to St. Xavier Female Academy for property used as a

[18]Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 497 (1950). For a contrary view in regard to faculty houses, see Kansas Wesleyan Univ. v. Salina County Bd. of Comm'rs. 120 Kan. 496, 243 Pac. 1955 (1926); Trustees of Rutgers College v. Piscataway Township, 20 N.J. Misc. 127, 25 A.2d 248 (1942); People ex rel. Clarkson Memorial College of Technology v. Haggett, 274 App. Div. 732, 734, 87 N.Y.S.2d 491, 493 (1949), aff'd, 300 N.Y. 595, 89 N.E.2d 882 (1949).

[19]Bishop of the Cathedral of St. John the Evangelist v. Arapahoe County, 29 Colo. 143, 68 Pac. 272 (1901); Yale Univ. v. Town of New Haven, 71 Conn. 316, 42 Atl. 87 (1899); Trustees of Griswold College v. State, 46 Iowa 275 (1877); Kansas Wesleyan Univ. v. Salina County Bd. of Comm'rs, 120 Kan. 496, 243 Pac. 1055 (1926); Webb Academy v. Grand Rapids, 209 Mich. 523, 177 N.W. 290 (1920); State ex rel. Spillers v. Johnston, 214 Mo. 656, 113 S.W. 1083 (1908); Watson v. Cowles, 61 Neb. 216, 85 N.W. 35 (1901); City of Hoboken v. Division of Tax Appeals, 134 N.J.L. 594, 49 A.2d 587 (1942); People ex rel. Clarkson Memorial College of Technology v. Haggett, 274 App. Div. 732, 87 N.Y.S.2d 491 (1949), aff'd 300 N.Y. 595, 89 N.E.2d 882 (1950); Nashville v. Ward Belmont School, 7 Tenn. App. 610 (1928); Red v. Morris, 72 Tex. 554, 10 S.W. 681 (1889). Contra, Amos v. Jacksonville Realty & Mortgage Co., 77 Fla. 403, 81 So. 524 (1919).

[20]Church Divinity School of Pacific v. County of Alameda, 152 Cal. App. 2d 496, 314 P.2d 209 (Dist. Ct. App. 1957); People ex rel. Gill v. Trustees of Schools, 364 Ill. 131, 4 N.E.2d 16 (1936); Multnomah School of the Bible v. Multnomah County, 218 Ore. 19, 343 P.2d 893 (1959).

[21]228 Ill. 605, 81 N.E. 1138 (1907). See also Western Theological Seminary v. City of Evanston, 325 Ill. 511, 156 N.E. 778 (1927); Monticello Female Seminary v. People, 106 Ill. 398 (1883).

[22]People ex rel. Goodman v. University of Illinois, 388 Ill. 363, 58 N.E.2d 33 (1944).

playground.[23] The Illinois court also considered a lake used for swimming at Catholic Bishop of Chicago Seminary to be tax exempt.[24]

A few states,[25] of which Virginia is typical, only require that the property be used "primarily" for educational purposes to qualify for tax exemption. The Virginia Constitution provides that exemption from taxation "shall apply to property primarily used for literary, scientific or educational purposes or purposes incidental thereto."[26] In the recent case of *County of Hanover v. Trustees of Randolph-Macon College*,[27] the Supreme Court of Appeals of Virginia ruled that faculty houses owned by the college were exempt; requiring only that the property be primarily used for educational purposes, rather than exclusively. The court declared that the dominant purpose of making land available to members of the faculty was to anchor them to the college and thereby promote efficient administration and educational processes. The heart of all colleges is, according to the court, its faculty; and the provision of housing is essential to obtain a representative faculty.[28]

The third group of states,[29] of which Pennsylvania is typical, do not have express constitutional or statutory provisions as to whether educational property, in order to qualify for tax exemption, must be used "exclusively" or "primarily" for educational purposes. In at least one state, Florida, insofar as fraternities are concerned, the matter is put at rest by an express statutory provision exempting them from taxation.[30] Pennsylvania grants exemption to "all school property owned by any school district, real and personal, that is occupied and

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[23]People ex rel. Thompson v. St. Francis Xavier Female Academy, 233 Ill. 26, 84 N.E. 55 (1908). See also Emerson v. Trustees of Milton Academy, 185 Mass. 414, 70 N.E. 442 (1904); Webb Academy v. City of Grand Rapids, 209 Mich. 523, 177 N.W. 290 (1920); People ex rel. Missionary Sisters v. Reilly, 85 App. Div. 71, 83 N.Y.S. 30 (1903).

[24]People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 142 N.E. 520 (1924).

[25]Va. Const. § 183; W. Va. Code ch. 11, art. 3, § 9.

[26]Va. Const. § 183. See also Commonwealth v. Trustees of Hampton Institute, 106 Va. 614, 56 S.E. 594 (1907) and Commonwealth ex rel. Moore v. Smallwood Memorial Institute, 124 Va. 142, 97 S.E. 805 (1919).

[27]203 Va. 613, 125 S.E.2d 812 (1962).

[28]Id. at 815.

[29]Ariz. Const. art. 9, § 2; Del. Const. art. 10 § 4; Fla. Stat. Ann. § 192.06(8) (1958) [exempts fraternities specifically]; Ga. Const. art. 7, § 2 2(2); Ind. Const. art. 10, § 1; Iowa Code § 427.1(11) (1954); Md. Ann. Code art. 81, § 9(8) (1957); Mass. Ann. Laws ch. 59 § 5 (1953); N.H. Laws tit. 9, ch. 73, § 24 (1942); N.J. Rev. Stat. § 54: 4-3.6 (1960); N.M. Const. art. 8, § 3; Okla. Stat. tit. 18, § 550 (1951); Pa. Stat. Ann. tit. 24, § 7-776 (1962); S.C. Const. art. 10, § 4.

[30]Fla. Stat. Ann. § 192.06 (1958).