

1974 WL 27989 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 17, 1974

*1 The property of Incarnation Development Foundation used as the parsonage for the Evangelical Lutheran Church, which Church established and manages the foundation, is exempt from property taxation.

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Gentlemen:

Reference is made to our conversation of yesterday regarding the taxable status of certain property, the legal title to which is held by the Incarnation Development Foundation. The property consists of a lot and a residence that is leased by the Foundation to The Evangelical Lutheran Church of the Incarnation and used by the church as the residence for its pastor. This property has been placed on the tax rolls of Richland County, and after conferring with the Honorable Robert Jeter, the Auditor for Richland County, and at his suggestion, you contacted this office to request our opinion of whether the property is exempt from taxation.

Article 10, Section 4 of the South Carolina Constitution, provides in part as follows:

‘There shall be exempted from taxation * * *; all public libraries, churches, parsonages and burying grounds * * *; Provided, That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such * * * libraries, churches, parsonages and burial grounds, although connected with charitable objects.’

A parsonage is defined as:

‘A certain portion of lands, tithes, and offerings, to support a parson. The glebe and house, or the house only, appropriated by a parish for its pastor.’ Webster's New Collegiate Dictionary.

‘Ordinarily a minister has the right to enter the church edifice to conduct services, and to live in the parsonage, which is a residence furnished to a minister by his church.’ 76 C.J.S., Religious Societies, Section 44, page 802.

We have heretofore had occasion to consider the constitutional exemption and have stated that the exemption is limited to the dwelling or residence that is owned and set apart by the church for its pastor's residence. OAG 2753, October 27, 1969, OAG 2803, December 30, 1968.

The question, therefore, is whether this property is ‘owned’ by the church within the intent and meaning of the exemption.

The corporation was created by action and vote of the congregation of the church taken December 16, 1973. The By-Laws and Directors of the Foundation were likewise approved and elected at this meeting. Article II of the By-Laws provides that the Foundation:

'* * * is organized exclusively for charitable, religious and educational purposes, specifically to support and benefit the Evangelical Lutheran Church of the Incarnation * * * by which the Foundation is operated, supervised, and controlled.'

We are further advised that the funds used by the Foundation to acquire this property were transferred to the Foundation from the church. The Foundation is therefore in substance an extension of the church.

*2 We find no case where this precise issue has been judicially treated, however, the Supreme Court of Iowa, in the case of [Ellsworth College v. Emmett County](#), 135 N. W. 594, was confronted with one quite similar. A will devised lands to trustees to sell and pay the proceeds over to the college and the effect of such was to vest legal title to the property in the trustees and equitable title in the college. The action was to require the taxation of the land because the legal title was held by the trustees. The Court favorably quoted from [Montgomery v. Wyman](#), 130 Ill. 17, 22 N. E. 845, as follows: 'The idea of ownership of property can only be connected with that which we call 'an institution of learning' by means of the interposition of either a society, or corporation, or a trust. If the title is in the controlling corporation, or if it is vested in a trustee or trustees, for the objects to be accomplished through the instrumentality of the institution, in either event the property is, within the contemplation of the statute, the property of the institution of learning.'

Relying on this and other cited and quoted authority, the Iowa Supreme Court held that the college was the owner of the lands and that because of such were exempt from taxation. See also [Cooley on Taxation, Vol. II, Section 677](#).

The residence involved herein is clearly the property of the church because the Foundation by its By-Laws and Charter is controlled, supervised and operated by the church. Whatever is done by the Foundation is in fact done by the church.

Under such circumstances, it is the opinion of this office that the property is the parsonage of the church and therefore exempt from taxation.

Yours very truly,

Joe L. Allen, Jr.
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