

MEMORANDUM OF LAW IN RE ROERICH MUSEUM.

The Roerich Museum is located at 310 Riverside Drive, New York City, and is a museum organized under the Education law of the State of New York and is devoted to the pursuit of the arts and sciences. According to the statements of those who conduct the affairs of the Museum, 51% of the building is devoted exclusively to the use of the Museum and 49% is devoted to apartments which are rented out to those who desire the educational privileges of the Museum. However, it seems that it is not absolutely necessary that one be interested in the Museum to lease an apartment there. Undoubtedly the apartments appeal more to the more cultivated mind than those who desire the privileges of using the Museum, but it is not absolutely necessary for apartment holders to use the Museum.

The sponsors of the Museum desire to have the whole property and building exempt from taxes on the ground that it comes within Section 4, Subdivision 7 of the Tax Law of the State of New York.

POINT 1.

The Museum as it conducts the apartments cannot be exempt under Section 4, Subdivision 7 of the Tax Law.

One of the leading cases in New York is Pratt Institute against the City of New York, 183 N. Y. page 151. The Pratt Institute leased real estate, the rents of which

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were devoted exclusively to corporate purposes. The Court held that tax exemptions are to be construed strictly and refused to exempt the property of Pratt Institute which brought in rents and profits by way of real estate leases.

The Delta Kappa Epsilon Society of Hamilton College against Assessors of Kirkland 74 App. Div. 553 is an interesting case in reference to our matter. The Delta Kappa was a Greek letter society existing at Hamilton College. The building was used for the purpose of furnishing members of the Society with a boarding place, where they might meet for social recreation and fellowship without intrusion from uninvited guests. It was at all times accessible to all members of the Fraternity belonging to other Chapters and upon special occasions was thrown open to the public. There was very little controversy regarding the facts. The Fraternity sought exemption on the grounds that it came under Section 4 Subdivision 7 of the Tax Law. The Court held that the primary purpose of the Fraternity was to furnish the members with an abiding place while attending College that they might eat and sleep there, that they might mingle with each other in social intercourse. It was to all intents and purposes a club-house, a place for rest and recreation, rather than for the purposes for which it was claimed to have been organized, which purposes were plainly secondary and incidental. Such being the case, we do not see how it is entitled to exemption from taxation. (See also Y. M. C. A. V. Sayles 32 App. Div. 197; Catholic Union v. Sayles 32 App. Div. 203; Medical Society v. Neff 34 App. Div. 83).

The Fraternity House case makes a very fine distinction in that it brings out the fact that even though it may be quite reasonable to assume that these members used the library for educational, scientific and literary purposes, that this fact did not answer the requirement of the Statute unless it also appeared that the building as a whole was used exclusively for carry out thereupon one or more of such purposes.

In contra distinction to this case there is the Matter of Syracuse University reported in 124 Misc. page 788. In this case the City of Syracuse assessed certain properties belonging to Syracuse University amounting in the aggregate to \$257,230. There was no question but that the University was a corporation organized exclusively for the moral and mental improvement of men and women and for educational purposes and if the real property was used exclusively for these purposes, it was exempt from taxation. The Court stated that dormitories and dining halls for students were essential parts of universities and colleges and that the test as to whether the property devoted to such use is exclusively used for educational purposes within the meaning of the exemption provisions of tax laws is that education contemplates the mental, moral and physical training of those in attendance upon the institution and their proper maintenance while upon the rolls. The Court cited *People v. Mezger* 98 App. Div. 237.

The statute should be applied so as to exempt the entire system of an institution and not merely to rooms or parts of places where tasks are done or lessons are recited. The criterion is whether the property is ex-

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clusively devoted to the use of the Academy in the education which the institution offers to those attendant upon it in the sense that education contemplates their mental, moral and physical training and their proper maintenance while upon the rolls. The Court held that the legislative intent appears to be not to wholly exempt all property held by a corporation organized for educational purposes but only that portion thereof as is actually used in carrying out such purposes. The Legislature does not permit such a corporation to acquire property with an undivided hope or expectation that at some time in the future it will be enabled to use it for these purposes and hold it indefinitely free from taxes. Citing *Sisters v. Reilly* 85 App. Div. 71.

In *Matter of School 188* App. Div. 5, all the property involved in this case which was used as a dormitory or for dormitory purposes was exempt, but there was an interesting fact that a three story brick building situated outside the University Campus, the ground floor of which was rented and occupied as a dormitory for nurses, was exempt to the extent that it was used as a dormitory, but not in so far as it was used for a store, from which the University derived an income.

This undoubtedly the New York law and an investigation of the following cases will verify this:

Off Fellows v. Burke 228 N. Y. 245;
Masons v. Breder 121 Misc. 553; also 121 Misc. 589;
Perry Lodge v. Clarke 125 Misc. 618;
Foreign Missions v. Assessors 207 App. Div. 151;
People v. Parker 84 Misc. 535.

In conclusion then it is reasonable to say that in order to exempt the property of a New York institution under

the Tax Law, the property must be devoted primarily to educational purposes and primarily as a source of income. If they were devoted exclusively and in themselves to the purposes of the Museum, then it seems that the property leased as apartments would be exempt.

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