

Approved March 18, 1987
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./~~p.m.~~ on March 17, 1987 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Senator Ehrlich
Robert Heath, Attorney, Wichita, Ks.
Bob Runnels, Kansas Catholic Conference
John Holmgren, Catholic Health Association of Kansas
Sister Mary Serena Sheehy, Sisters of Charity of Leavenworth
Fred Weaver, Board of Tax Appeals

Chairman Kerr called the meeting to order and announced that the agenda for the day was to have a hearing on Senate Bill 362.

Senator Ehrlich testified in support of S.B. 362. He explained that the intent of this bill is to establish exemption of convents and related religious properties owned by a church or non-profit religious organization. He stated that he felt the "original house" should be exempt only, not those owned by individuals.

Robert Heath testified in support of S.B. 362. (Attachment 1) He stated that he is General Counsel to the Sisters of St. Joseph of Wichita. In 1988 they will celebrate 100 years of service. They work in many areas, including health care, education, and teaching.

He stated that because of the 1986 Legislative decision amending K.S.A. 79-201 and adding paragraph 7, specifically exempting "all parsonages owned by a church society and actually and regularly occupied as a residence by a minister . . ." (See Chapt. 368 and 369, 1986 Session Laws of Kansas), a flood-gate of problems has been opened for Catholic convents.

He stated that some county appraisers took this as a directive to include all properties used as a residence, including convents, whether designated as parsonages or otherwise, and notified the owners that these properties were to be returned to the tax rolls.

He stated that in order to qualify, convents are having to assert they are parsonages, which they technically are not. He asked that the provisions of the bill should apply to all taxable years commencing after December 31, 1985 to insure that such properties would not be taxed for the year 1986.

In response to questions, he suggested that on line 0024 that "society, congregation or order which is subject to the activity of a bishop or other ecclesiastical authority..." be added after the word "organization"; also, on line 0025 add "whose members have professed the vows of obedience, chastity, and poverty..." after the word "persons."

Bob Runnels testified in support of S.B. 362. (Attachment 2) He stated that the women living in the convents serve the community in many ways and their pay is minimal. He felt that the convents have been exempt in the past, and should remain so.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S Statehouse, at 11:00 a.m./~~pm~~ on March 17, 1987

John Holmgren testified in support of S.B. 362. (Attachment 3) He stated that he is the Executive Director of the Catholic Health Association of Kansas, which represents 26 religious non-profit facilities in Kansas, including 18 hospitals and 8 nursing homes.

He stated that to tax the residences they live in would be to ignore the important contributions they give to the state of Kansas. He urged favorable passage of S.B. 362.

Sister Mary Serena Sheehy testified in support of S.B. 362. She stated that continued exemption is important in preserving an important part of the way of life in a convent. The hardships that taxation of this property would impose on churches and religious groups would be very difficult. (Attachment 4)

Fred Weaver, Board of Tax Appeals, (Attachments 5 & 6) testified in opposition to S.B. 362. He stated that this was clearly a very serious problem. It would be very difficult to write a statute that would apply to the Catholic religion concerning property exemptions without opening the door to many other "so called" religions.

He stated that the parsonage statute as it is written exempts residences for clergy actually engaged in exclusively religious functions. A statute exempting "convents" must be extremely broad. Even if such a statute could be written, it would most likely exempt far more property than the language is designed to affect. He said he felt this issue should be left alone for a year and give the Board of Tax Appeals a chance to make the individual decisions.

Senator Montgomery made the motion to accept the minutes of the March 6, 1987 meeting. Senator Allen seconded. Motion carried.

Meeting adjourned.

STATEMENT IN SUPPORT OF SENATE BILL 362

My name is Robert L. Heath. I serve as the General Counsel to the Sisters of St. Joseph of Wichita, a congregation of Roman Catholic religious women who have dedicated their lives to charitable good works.

History

Next year, 1988, marks one hundred years of dedicated services to the people of Kansas. The Sisters were incorporated as a non-profit corporation in 1896 and made their home permanently in Wichita.

Works of Service in Health Care

The Sisters of St. Joseph have two primary works of charitable service. Perhaps best known and most visible is their health care apostolate -- the rendering of health care to all persons who seek their assistance, regardless of race, creed or economic status. The Sisters seek to provide comprehensive health care programs in cooperation with other health and social agencies to meet the needs of the people being served. This is being accomplished by the operation of eight hospitals and one nursing home within the state in the communities of Concordia, Emporia, Halstead, Manhattan, Pittsburg, Pratt, Salina and Wichita.

Works of Service in Education

The Sisters also have as a primary concern, Christian education. To this end, they staff sixteen parochial elementary and secondary schools throughout the state and also engage in higher education with the sponsorship of St. Mary of the Plains College, a four year, co-educational liberal arts college in Dodge City, Kansas. The Sisters are also engaged in providing education to the physically and mentally handicapped through work at the Holy Family Center in Wichita. A number of programs exist for religious education in the various parishes throughout the state. In addition, the Sisters also engage in non-profit educational pursuits primarily for non-sectarian purposes such as programs teaching English as a second language for foreign persons attempting to acclimate themselves to the United States, stress management seminars and other health related subjects.

Tax Exempt Status

Because of the nature of their work, the Sisters are recognized by the Internal Revenue Service as a 501(c)(3) eleemosynary and charitable entity -- and therefore exempt from federal income tax. Religious institutes whose members accept the vows of poverty, chastity and obedience have traditionally enjoyed special recognition in the tax law. Likewise, the State of Kansas when it adopted its Constitution in 1859, provided in Article 11, Section 1, that:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes. . . shall be exempt from taxation." See also K.S.A. 79-201 Second (Supp. 1986) and K.S.A. 79-201 Seventh (Supp. 1986).

The Problem

In 1872, the Kansas Supreme Court held in *Vail v. Beach*, 10 Kan. 214 (1872) that Section 1 of the Kansas Constitution did not exempt a parsonage from taxation. The court appeared to narrowly interpret the definition of "exclusive use." This resulted in a specific exemption being enacted in 1909 for properties owned and used by religious organizations. In 1968 a study of the property tax in Kansas was undertaken by a joint committee of the Legislature. Ultimately, the District Court of Shawnee County ruled in *The Matter of the Application of the First Assembly of God Church*, Case No. 84 CV 965 (1984), that on the unique facts presented, a pastor's use of a parsonage for a home for himself and his family was not exempt under Kansas law.

This ruling resulted in the Legislature once again addressing the "parsonage" issue, amending K.S.A. 79-201 (1985 Supp.) to add Paragraph 7, specifically exempting "all parsonages owned by a church society and actually and regularly occupied as a residence by a minister. . ." (See Chapter 368 and 369, 1986 Session Laws of Kansas 1941-1948).

This action was followed by an Attorney General's Opinion which indicated that all property owners claiming the parsonage exemption must file a request for exemption with the State Board of Tax Appeals. Some county appraisers across the state apparently took this as a directive to

include all properties used as a residence, which previously enjoyed tax exempt status, including convents, whether designated as parsonages or otherwise, and notified the owners that such properties were to be returned to the tax rolls. This is the case even though such properties had been previously determined to be exempt for general religious purposes for years without any change of use by the users of the property. Thus, convents of religious women, which enjoyed exemption from tax as aforesaid for many years, are being placed back on the tax rolls, as the County appraisers contend that a convent does not fulfill the requirements of K.S.A. 79-201 Seventh which exempts parsonages if:

1. The property is owned by a church;
2. Is occupied by a minister or clergyman; and
3. The minister is actually and regularly engaged in conducting church services or religious ministrations.

In order to qualify under a narrow interpretation of this statute, convents are having to assert they are in fact parsonages, which they technically are not. While there are some similarities, i.e., both are facilities used as a residence or living quarters and occupied by persons dedicated to the religious life, there are also clear distinctions.

1. The property is owned by the non-profit corporation of the religious congregation;
2. The convents are occupied by professed religious women who take vows of poverty, chastity and obedience; and
3. The religious women are actually and regularly engaged in conducting the mission of their congregation and are therefore involved in ministrations in the sense of giving aid, service and comfort to mankind.

What is important here is recognition that a religious society, order or congregation is engaged in conducting religious and charitable ministrations (See Webster's 3rd New International Dictionary 1970, page 1439) and other charitable works, and such fulfills the intent of the Constitution and statutes that authorize tax exempt sta-

tus. The determination of the exemption should not turn on a matter of semantics and whether the residence is classified as a parsonage, a convent or otherwise.

There is at the present time a case pending before the Board of Tax Appeals (Docket 3162-86-TX) involving the Sisters of Charity of Leavenworth on this very issue. Likewise, the Sisters of St. Joseph have had two of their convents placed back on the tax rolls by the Sedgwick County Tax Appraiser's Office and applications are presently pending.

The Solution

Legislation is necessary to clearly specify the intent of the Legislature to include within the meaning of "religious use" property held by religious societies, orders or congregations which in fact are part of an organized religion, and whose members own and occupy such property as residences and are actually and regularly engaged in religious and charitable ministrations of their congregation, thus fulfilling their mission of charitable service to the people.

Senate Bill 362

This Bill recognizes a statutory exemption from tax for buildings owned by a church or religious organization or order regularly occupied and used exclusively as a residence for its members who are bound by vows to a religious life. Accordingly, we support enactment of this Bill.

However, we suggest the provisions of the Bill should apply to all taxable years commencing after December 31, 1985 to insure that such properties would not be taxed for the year 1986. This can be accomplished by changing the date in Line 0031.

I thank you for the opportunity to appear before you and would be happy to answer any questions you might have.

ROBERT L. HEATH
Blaes and Heath
100 North Main Suite 500
Wichita, Kansas 67202
(316) 264-0301

TESTIMONY

SENATE ASSESSMENT & TAXATION COMMITTEE

Tuesday, March 17, 1987

RE: Senate Bill 362

KANSAS CATHOLIC CONFERENCE

By: Robert Runnels, Jr., Executive Director

Chairman, members of the Senate Assessment and Taxation Committee, my name is Bob Runnels, I am Executive Director of the Kansas Catholic Conference and speak under the authority of the Roman Catholic Bishops of Kansas.

I will speak today in support of Senate Bill 362 that exempts church convents from Property Tax in Kansas.

I speak in behalf of those convents owned by their communities or the church in which they serve. Such buildings are held in trust for the people of the community.

Religious living in convents serve the community by the nature of their vows. They have dedicated their lives to helping others. They serve as ministers in churches, hospitals, nursing homes and other church related activities . Usually their pay is a minimal stipend set at a poverty level.

Today more than anytime in memory religious are being challenged to carry on an ever larger role in administering to those in need ... those in the cities being cut off of federal and state programs ... those in our rural areas who

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are now facing financial disaster.

In the past convents have not been taxed ... taxing is a recent undertaking by some County Assessors ... our request then for tax exemption is to continue a long standing tradition.

This tax exemption bill will leave in place a wholesome relationship between church and state.

Our Conference asks you to favorably report bill 362 for passage to the Senate.

Testimony on S.B. 362

by

John H. Holmgren

Executive Director

Catholic Health Association of Kansas

before the

Senate Committee on Assessment and Taxation

March 17, 1987

Senator Kerr and members of the Committee. My name is John H. Holmgren and I am the Executive Director of the Catholic Health Association of Kansas. Our members include 26 religious non-profit facilities in Kansas; 18 Catholic hospitals and 8 Catholic nursing homes. We are widely dispersed across the state, from Garden City and Victoria on the West to Leavenworth, Topeka, and Kansas City in Eastern Kansas.

We ask your support of Senate Bill 362, a bill to exempt the property tax on residential buildings used by all churches and non-profit religious congregations. In our case, these buildings are used exclusively as a residence by our Sisters at all our locations. We ask that this Bill be passed, for the following reasons:

1. Historically, the Sisters have always been tax exempt as a religious organization doing good for the people of

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their communities, for all church-related activities.

2. Traditionally, the Sisters and the religious have owned such residences as residences in trust, whether it be for a residence of a hospital or a school, from one generation to another, as part of their religious, charitable lives. They live in their convents as religious members of a community of Sisters dedicated to God's work.

3. Sisters take vows when dedicating their lives to the church, and those vows are followed as they perform, daily, many deeds of worth for others in their communities, deeds which fulfill the purpose of their vows - to help others in God's work.

4. Today more than ever, the religious are being challenged to continue their work with more and more cut-off of federal and state funds for charity, fund which

they are desperately seeking to replace - such as the uncompensated care of the medically poor in their hospitals, and for Chapter 2 federal support funds for their schools. Tax exemption of residential property of the religious would help all churches, all religions, not just ours alone, to help them continue to maintain a decent and good quality of life for all Kansans.

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John H. Holmgren

5. In effect, Catholic Sisters help subsidize the cost of educational and hospital and nursing home activities in Kansas, through the charitable contribution of their time as religious. Although they receive a nominal stipend for their effort from their congregational motherhouse, their stipend is for basic necessities alone. In this regard, then, they are already contributing substantially to the community in their work. To tax the residences that they live in would be to ignore that important contribution. It would restrict them in their charitable works in education, health and in their care of the poor. That is something that we do not want to happen at a time when funds available from state, local and national governmental sources are being reduced in these areas.

Support of the tax exemption will support the good works of these religious women for the benefit of all our citizens.

Finally, we would like to thank you Senator Kerr, and members of this committee for the opportunity to speak to you. We urge your support of S.B. 362. Thank You.

John H. Holmgren

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TESTIMONY IN FAVOR OF SENATE BILL 362

I am grateful for the opportunity to speak to the assembled Senate of the State of Kansas in favor of Senate Bill 362 on behalf of the continued tax exemption of religious communities from property and ad valorem taxes. The authority for this time-honored exemption is from the Constitution of the State of Kansas Article II Section 1 which provides, among other things, as follows:

"...All property used exclusively for...literary, education, scientific, religious, benevolent and charitable purposes"...is exempted from property taxation.

Further, K.S.A. 79-211 likewise provides:

"Third. All real property and all tangible property, actually and regularly used exclusively for educational...religious, benevolent or charitable purpose"...is exempt from "all property or ad valorem taxes levied under the laws of the State of Kansas."

Convents are dwelling for religious women who live in community. Living in religious community is in itself an act of religious since the women who do so have taken vows of poverty, chastity and obedience and who live in religious community to support and witness to this commitment. By virtue of the vow of poverty, members of religious communities own no real property, real or personal, save immediate personal effects. Furthermore all members of the religious community are assigned to works in keeping with the philosophy and mission of the religious community, e.g., educational, hospital, pastoral instruction, and other religious and charitable services.

FEB 26 1987

MEMO

TO: Senator Fred Kerr.

FROM: Fred L. Weaver *FLW*

RE: Convent Exemption

DATE: February 20, 1987

Your letter of February 9, 1987, seeks advice on the question of exempting 'convents' from property taxation. As Mr. Heath points out, there are some similarities among 'convents' and parsonages. Both properties are living quarters and the occupants are at least indirectly associated with a church. Mr. Heath is also correct when he acknowledges that 'convents' are not equivalent to parsonages.

Current law.

Kansas courts hold that the Constitution does not exempt residences regardless of who lives there. See In Re First Assembly of God, Shawnee County District Court #84-CV-965. (December, 1984). The Court specifically found that use of the premises as living quarters constituted a secular use, even though a pastor's home is also used for prayer, counseling and church meetings. Tax exempt status for parsonages is exclusively a creature of statute.

K.S.A. 1986 Supp. 79-201 Seventh currently exempts parsonages if:

1. The property is owned by the church and
2. Is occupied by a minister or clergyman, and
3. The minister is actually and regularly engaged in conducting church services, or religious ministrations.

The request for exemption of 'convents' is a new issue. The Kansas Catholic Conference and Kansas Council of Churches neither advocated nor testified in favor of 'convent' exemption prior to this year. Testimony from religious organizations has been confined to parsonage. Exemption.

Convent definition.

Convent is a term subject to a variety of interpretation. Black's Law Dictionary, 4th Edition and Webster's Third New International Dictionary, define 'convent' as ". . . a house or set of buildings occupied by a community of religious recluses . . . an association or community of recluses devoted to a religious life under a superior . . ." a religious house, now regarded as being merely voluntary association." The first definitions are narrow, describing only those Orders who occupy 'convents' as a means of separating themselves from society. The last definition is broad--describing virtually any residence occupied by a member or leader of any voluntary association. Arguably a broad definition would include 'convents' owned by a 'church' but it also includes voluntary associations of questionable 'religious' origin.

Kansas cases direct this Board to adopt a narrow or strict definition of 'convent'. Taxation is the rule and exemption is the exception. Exemption statutes are strictly construed. In

Re Board of Johnson County Commissioners, 225 Kan. 517 (1979).
Farmers Coop v. Kansas Board of Tax Appeals, 236 Kan. 632 (1985).
A strict interpretation of 'convent' would not entitle Mr. Heath's clients nor any similar 'community' to exemption. Typically a sister or nun completes her religious training and takes vows of poverty, chastity, and devotion to 'religious' life. The Order then assigns her to some 'ministry' operated by the Order. For example, the Board heard testimony in one case where the sisters were assigned a house to live in. The sisters were all employed at a hospital owned and operated by the same Order which owned the home. These sisters assigned to work as hospital administrator, clerk in medical records and director of pastoral care. The hospital paid the 'mother house' the same salary any other employee receives in the same position. Each year, the sisters submit a budget for living expenses which is then paid by the Order. The budget approved is directly related to the amount paid to the Order and is commensurate with the nun's position. The Treasurer of the Order testified the amount 'paid' to the sisters was less than received from the hospital. Applicants have sought to exempt convents occupied by teachers in parochial schools and colleges. A recent exemption case dealt with a vehicle used to transport a nun to her job in the State Treasurer's office. it is difficult to find any religious purpose for these properties, let alone exclusive religious use.

The parsonage statute exempts homes occupied by clergymen engaged in conducting services or religious ministrations. Nuns are prohibited from leading church services or administering the sacraments. Thus they are not conducting services. Those who support exemption assert that nuns are engaged in religious ministration of the church. The Board cannot interpret religious ministrations so broadly as to include teaching a college course, keeping medical records or managing a hospital. Even if some of the nun's duties are connected to the church or Order, her duties are not exclusively religious. If "religious ministration" were construed so broadly as to include these duties, the Board would have no basis to deny exemption for a person who donates his residence and salary to a self-organized 'church' and is employed by a hospital, school or virtually any other occupation. The only requirement for exemption in that case is that the individual truly believe the association is a 'religious' entity and that the 'church' own the property.

Testimony presented to the Board shows that the Order of sisters derives revenues in excess of the expense of buying a house and supporting its occupants. The Board is concerned that this practice comes dangerously close to ". . . property held or used as an investment even though the income . . . is used wholly for [exempt] purposes." K.S.A. 1986 Supp. 79-201 Second. Even if the property is used for some religious purpose, it is also used, at least in part, to generate income for the Order.

Finally, the Board notes that most 'convents' are owned by the Order, not the church. If a "religious society", as distinguished from a church, qualifies for exemption, this Board must also grant exemption to a broad spectrum of self proclaimed 'religious' societies. There is no legal distinction between the

cases already pending before the Board and the other potential applicants under a broad or 'permissive' interpretation. If the Legislature adopts a policy exempting 'convents,' that policy would also exempt any organization claiming to be 'religious.'

Conclusion--

The parsonage statute as written exempts residences for clergy actually engaged in exclusively religious functions. A statute exempting 'convents' must be extremely broad, perhaps unconstitutional. Even if the statute passes constitutional muster, a law broad enough to include convents also exempts far more property than the language is designed to affect.

Testimony on Senate Bill 362 to
Senate Assessment & Tax Committee

The Board of Tax Appeals previously submitted a memorandum reviewing "convent" exemptions. This testimony supplements that review.

Kansas Courts interpret the Constitution so as to exclude residences occupied by any individual, regardless of their professed beliefs or occupation. The court held residences are not exclusively used for religious purposes. Senate Bill 362 is another departure from the exclusive use test for exemption.

The Board is potentially faced with the difficult task of interpreting the language of the bill. Kansas case law dictates that exemptions be construed narrowly. If the Board follows prior court decisions, few, if any, properties will be added to the exempt rolls. For example, a nun who teaches school or works in a hospital is engaged in educational or hospital "ministrations," not charitable or religious functions. The Board could instead disregard case law and adopt a broad interpretation. Senate Bill 362 exempts property owned by any "nonprofit religious organization" occupied by adherents to that "religion." In a broad sense, Senate Bill 362 makes no distinction between Catholics, the Unification Church, Rajnesh evangelists or Lawsonians. If the language is limited to a single denomination, it is constitutionally suspect. Any person could organize a "non-profit religious organization" which qualifies under the bill. A recent court decision even declared "secular humanism" to be a religion.

Senate Bill 362 is either a broom which sweeps the convent issue under the rug or a key which throws open the door to any "religious" organization. The statute must be applied uniformly.