NOTES

Taxation of Institutions of Purely Public Charity in Pennsylvania

Pursuant to the provision of the Pennsylvania Constitution that the General Assembly may exempt from taxation, *inter alia,* institutions of purely public charity,[1] the state legislature has several times enacted tax exemption laws. The most recent is the Act of May 22, 1933,[2] which declares the exemption of:

> "All hospitals, . . . associations and institutions of learning, benevolence, or charity, with the grounds annexed thereto and necessary for the occupancy and enjoyment of the same, founded, endowed, and maintained by public or private charity . . .;[3] [and] All property, including buildings and the land reasonably necessary thereto, provided and maintained by public or private charity, and used exclusively for public libraries, museums or art galleries, so long as the said public use continues."[4]

In Pennsylvania, as elsewhere, statutes allowing exemption from taxation are strictly construed against the person claiming exemption.[5] Liability to taxation is the rule; exemption is the exception.[6] The claimant of immunity from taxation has the burden[7] of proving affirmative legislation in support of his claim and that the claim is clearly within it.[8] "If his right to exemption is doubtful, the doubt must be resolved in favor of the" taxing unit.[9]

The recent *Y. M. C. A.* case, reported in the January issue of this REVIEW,[10] raised anew the increasingly important problem of what constitutes a purely public charity and the extent to which it may be taxed, in the light of these constitutional and statutory provisions and the rule of strict construction.

---

1. Art. IX, § 1. Actual places of religious worship may also be exempted. *Ibid.* The application of this provision will be discussed secondarily in subsequent footnotes.

Only the General Assembly, and not courts, may grant exemptions. Cambria County v. Academy of St. Francis, 32 Pitts. L. J. 249 (1885). The immunity from taxation extends to all county, city, borough, town, township, road, poor and school taxes. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204. There is no immunity from paying service charges [Philadelphia v. Union Burial Ground Soc., 39 W. N. & Cas. 351 (1897); Harrisburg v. Cemetery Ass'n, 293 Pa. 390, 143 Atl. 111 (1928); Pittsburgh v. Young Men's Christian Ass'n, 72 Pitts. L. J. 977 (1924)], nor from state taxation. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (1). There may be an estoppel to deny a duty to pay taxes. Reynoldsville v. First Methodist Episcopal Church, 19 Pa. Dist. 400 (1909). See generally Note (1932) 80 U. OF PA. L. REV. 724.

2. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204. This Act provides for the exemption also of the property of "all churches, meeting-houses, or other regular places of stated worship, with the ground thereto annexed necessary for the occupancy and enjoyment of the same." *Id.* (a).

3. *Id.* (c).

4. *Id.* (1).

5. Appeal of Ivy Hill Cemetery Co., 120 Pa. Super. 340, 183 Atl. 84 (1930); *cf.* Harrisburg v. Harrisburg Cemetery Ass'n, 293 Pa. 390, 143 Atl. 111 (1928).

6. Dougherty v. Philadelphia, 112 Pa. Super. 570, 172 Atl. 177 (1934).

7. City of Scranton v. Moses Taylor Hospital, 20 Lack. Jurist 293 (1919).

8. Wagner Free Institute of Science's Appeal, 116 Pa. 555, 11 Atl. 402 (1887); Dougherty v. Philadelphia, 314 Pa. 298, 171 Atl. 583 (1934); Young Men's Christian Ass'n v. Philadelphia, 187 Atl. 204 (Pa. 1936), (1937) 85 U. OF PA. L. REV. 327.

9. Harrisburg v. Cemetery Ass'n, 9 Pa. D. & C. 773, 777 (1927).

10. Young Men's Christian Ass'n v. Philadelphia, 187 Atl. 204 (Pa. 1936), (1937) 85 U. OF PA. L. REV. 327.

What Is a Purely Public Charity

An institution of purely public charity [11] is recognizedly an organization the object of which, as manifested both in its charter and in actual practice, is to establish and maintain a purely public charity.[12] If the charter purpose is not charitable, the fact that the organization is operated charitably is regarded as immaterial.[13] Likewise, if the articles provide for the foundation and maintenance of an institution of purely charity, but in actual practice the association does not conform to the charter, its property is not exempt.[14]

In defining the words "institution of purely public charity",[15] the courts say that "purely"—meaning "completely, entirely, unqualifiedly" [16]—is prefixed to modify "public" and not "charity." [17] That is, the fact that profit, if any, is exclusively devoted to the purposes of the institution, indicates only that it is purely a charity and not that it is purely public.[18] The word "public", moreover, is interpreted not as pertaining to the state or government, but as relating to or affecting the whole people of the commonwealth. An institution of purely public charity, therefore, is not required to be one controlled or managed by the commonwealth, but may be a private organization for purposes of purely public charity, so long as it is open to the indefinite public.[19]

A charitable institution may restrict its advantages to a particular class and still be public, even though there be a paucity of beneficiaries. However, the classification must be based on factors which affect or may affect any of the whole populace without any volition on their part. For, if the right of admission depends on the existence of a relation to a particular group, the relation being dependent upon an entirely *voluntary* act on the part of the bene-

11. The word "charity" means a "gift for a general public use, to be applied . . . for the benefit of an indefinite number of persons . . . from an educational, religious, moral, physical or social standpoint." Taylor v. Hoag, 273 Pa. 194, 196, 116 Atl. 826 (1922); *cf.* Barnes Foundation v. Keely, 108 Pa. Super. 203, 207, 164 Atl. 117 (1933); Philadelphia v. Masonic Home, 160 Pa. 572, 28 Atl. 954 (1894); Centennial and Memorial Ass'n of Valley Forge, 235 Pa. 206, 210, 83 Atl. 683 (1912). The purity and unselfishness of the donor's motive in making the gift do not fix the charitable nature of the gift. Hastings v. Long, 11 Pa. Dist. 370 (1901); *cf.* Donohugh's Appeal, 86 Pa. 309 (1878).

12. Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892); Mullen v. Juenet, 6 Pa. Super. 1 (1897); Pocono Pines Assembly v. Monroe County, 29 Pa. Super. 36 (1905); Friends' Boarding House v. Bucks County, 80 Pa. Super. 475 (1923).

13. Easton Italian Home Ass'n v. Easton, 6 Pa. D. & C. 448 (1924) (association incorporated for the social enjoyment of its members, but doing considerable literary, educational and musical work); Friends' Boarding House v. Bucks County, 80 Pa. Super. 475 (1923) (home with charter purpose of providing for aged and infirm Friends and Friendly people of limited means, but actually admitting aged and infirm without discrimination); *cf.* Mullen v. Juenet, 6 Pa. Super. 1 (1892).

14. Pocono Pines Assembly v. Monroe County, 29 Pa. Super. 36 (1905) (failure to adhere to charter purpose of advancement of "religious, literary and scientific attainment among the people").

15. It may be noted, in passing, that an actual place of religious worship is defined as a place consecrated to religious worship "where people statedly convene and join some form of worship, and not devoted to" individual communion with one's Maker. Laymen's Week-end Retreat League v. Butler, 83 Pa. Super. 1, 6 (1924). Worship must be not occasional, but fixed, established, and occurring at regular times.

16. Donohugh's Appeal, 86 Pa. 306, 314 (1878); Episcopal Academy v. Philadelphia, 150 Pa. 565, 573, 25 Atl. 55, 56 (1892); Harrisburg v. Harrisburg Academy, 308 Pa. 585, 590, 162 Atl. 815, 817 (1932).

17. Philadelphia v. Masonic Home, 160 Pa. 572, 28 Atl. 954 (1894). The purpose is to distinguish between purely public charities and private or partially public charities. Donohugh's Appeal, 86 Pa. 306 (1878).

18. Philadelphia v. Masonic Home, 160 Pa. 572, 28 Atl. 954 (1894).

19. Donohugh's Appeal, 86 Pa. 306 (1878); Board of Home Missions v. Philadelphia, 266 Pa. 405, 109 Atl. 664 (1920). This is recognized in the Act of May 22, 1933. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (c).

ficiary, the establishment is not public. Under this rule, a home for indigent, afflicted and aged Freemasons is not purely public;[20] but an orphanage for the support and maintenance of white female orphan children from four to eight years of age,[21] or of indigent Jewish children,[22] or a home for white single or widowed women in indigent circumstances,[23] is purely public, entry into the class being entirely *involuntary*.

The fact that preferences are or may be given to members of a particular class of people does not deprive an association of its purely public character, provided that the institution is ultimately open to the indefinite public.[24] An asylum for the support and maintenance of orphan girls is purely public, notwithstanding that girls from a particular city who are children of soldiers or firemen are preferred.[25] A college's preference of Friends does not render it a private charity if otherwise admission is allowed to all applicants regardless of race, color, and creed.[26] However, if the right to admission is not absolute, but is limited to those whom the managers of the institution within their uncontrolled discretion choose to admit, the association is not regarded as purely public.[27] On the other hand, regulations and conditions for the admission of the public to the institution, such as the beneficiary's age and educational ability, and the physical limitations of the institution, do not destroy the purely public nature of the association, so long as the regulations and conditions are reasonable and operate equally.[28] And, of course, the mere fact that an institution is controlled or managed by persons who are, or are required to be, members of a particular sect or denomination, does not make the property of the institution taxable.[29]

Extent of Exemption

A difficult question frequently confronting the Pennsylvania courts is: How much of the property of an institution concededly of purely public charity is exempt from taxation?[30] It has been contended that property which is not self-

20. Philadelphia v. Masonic Home, 160 Pa. 572, 28 Atl. 954 (1894); see Donohugh's Appeal, 86 Pa. 306, 314 (1878).

21. Burd Orphan Asylum v. School District, 90 Pa. 21 (1879).

22. B'nai B'rith Orphanage v. Heidler, 46 Pa. Co. Ct. 49 (1917). But an institution to which Catholics generally, not Catholic orphans, are admitted to the exclusion of all others, is not public, religious preference being considered voluntary. See Philadelphia v. Masonic Home, 160 Pa. 572, 578, 28 Atl. 954, 955 (1894).

23. Hastings v. Long, 11 Pa. Dist. 370 (1901).

24. Donohugh's Appeal, 86 Pa. 306 (1878); Burd Orphan Asylum v. School District, 90 Pa. 21 (1879); Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892); Haverford College v. Rhoads, 6 Pa. Super. 71 (1897); *cf.* Friends' Boarding House v. Bucks County, 80 Pa. Super. 475 (1923).

25. Foulke v. Long Institute, 26 Pa. Co. Ct. 561 (1901).

26. Haverford College v. Rhoads, 7 Del. Co. Rep. 112 (1897); Bryn Mawr College v. Montgomery County, 34 Montg. Co. Rep. 114 (1917).

27. Delaware County Institute v. Delaware County, 94 Pa. 163 (1888); Thiel College v. Mercer County, 101 Pa. 530 (1882); Harrisburg v. Harrisburg Academy, 308 Pa. 585, 162 Atl. 815 (1932).

28. Barnes Foundation v. Keely, 314 Pa. 112, 171 Atl. 267 (1934). Unless reasonable regulations are enforced, efficient performance of the institution's purposes may be hindered, if not completely obviated.

29. Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892); Board of Home Missions v. Philadelphia, 266 Pa. 405, 109 Atl. 664 (1920); Haverford College v. Rhoads, 6 Pa. Super. 71 (1897). Parochial schools open and free to all school children of school age without regard to creed, race or condition, are likewise exempt. Schuylkill Seminary v. Reading, 6 Berks Co. Rep. 237 (1914); Boyle v. Westmoreland County, 16 Westmoreland Co. Rep. 1 (1928).

30. For taxation purposes, it is proper to divide the property of an institution of purely public charity or of an actual place of religious worship into a taxable part and a non-taxable part. Dougherty v. Philadelphia, 314 Pa. 298, 171 Atl. 583 (1934). If there is an overassessment or an inadequate exemption, the remedy lies in appeal from the action of the board of

supporting, and even all property to which a charitable institution has title, should be relieved of taxation. But, under the decisions, only such property as is *actually used* for immediate purposes of purely public charity is exempt.[31] Until the property has begun to be used in this manner, it is taxable.[32] And, even though the property has at some time been used for charitable purposes, the exemption ceases when such user ceases.[33] However, the property need not be devoted in perpetuity to such objects. It is sufficient that it is so consecrated at the time of the levy,[34] provided that it is not too temporary.[35] Nor need the

---

revision to the court of common pleas. But if there is a total want of power to tax, equity has jurisdiction to restrain attempted taxation. *Ibid.;* White v. Smith, 189 Pa. 222, 42 Atl. 125 (1899). On a method of calculating the value of the taxable portion, see the excerpt from the trial court's opinion, in Board of Home Missions v. Philadelphia, 266 Pa. 405, 407, 109 Atl. 664 (1920).

Immunity is not limited to the charity's realty, but extends also to personalty. Northampton College v. Lafayette College, 128 Pa. 132, 18 Atl. 516 (1889); Mattern v. Canevin, 213 Pa. 588, 63 Atl. 131 (1906). But the Act requires that the institution must be "seized of the legal or equitable title in the realty and possessor of the personal property absolutely." PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (1). Formerly a leasehold interest was sufficient for exemption. Mercersburg College v. Mercersburg Borough, 53 Pa. Super. 388 (1913); *cf.* (1929) 39 YALE L. J. 137.

31. Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892); Pennsylvania Hospital v. Delaware County, 169 Pa. 305, 32 Atl. 456 (1895); White v. Smith, 189 Pa. 222, 42 Atl. 125 (1899); Ivy Hill Cemetery Co.'s Appeal, 120 Pa. Super. 340, 183 Atl. 84 (1936); Pittsburg v. Home of the Friendless, 3 Pa. Co. Ct. 390 (1886). This principle is recognized in the Act of May 22, 1933, which provides that "all property . . . other than that which is in actual use and occupation for the purposes specified in this section . . . shall be subject to taxation. . . ." PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (1).

32. Philadelphia v. Jewish Hospital Ass'n, 148 Pa. 454, 23 Atl. 1135 (1894) (property idle); Johnson v. Delaware County, 82 Pa. Super. 285 (1923); Dougherty v. Philadelphia, 112 Pa. Super. 570, 172 Atl. 177 (1934) (property in course of construction); Grubb v. Weaver, 19 Pa. Co. Ct. 609 (1897); Lancaster County v. Warfel, 19 Lanc. L. Rev. 78 (1901). But if a hospital has an addition in the course of erection, although not actually in use for hospital purposes, the addition is exempt on the ground that the enlargement of the hospital is comprehended within the exemption. *In re* Appeal of Children's Hospital, 82 Pa. Super. 196 (1923).

The doctrine of user applies also to actual places of religious worship. Rescue Home's Appeal, 82 Pitts. L. J. 510 (1934); Luzerne County v. Camp Meeting Ass'n, 3 Kulp 175 (1884); Harrisburg v. Ohev Sholem, 3 Pa. Co. Ct. 589 (1906). The fact that a building has been erected, or is being erected, for the purpose of religious worship does not without more render the property exempt, since it is the user and not the building which controls the granting of immunity from taxation. Mullen v. Erie County, 85 Pa. 288 (1877); Moore v. Taylor, 147 Pa. 481, 23 Atl. 768 (1892).

33. Philadelphia v. Jewish Hospital Ass'n, 148 Pa. 454, 23 Atl. 1135 (1892); Grubb v. Weaver, 19 Pa. Co. Ct. 609 (1897). But if, in order to enlarge an exempt school, the old school building is torn down and a new building is in the course of erection on tax day, it is still exempt for the following tax year. Repairs, restorations and enlargements are not indicative of an intent to cease to use the property for a non-exemptible purpose. They are only normal characteristics of the user. Dougherty v. Philadelphia, 112 Pa. Super. 570, 172 Atl. 177 (1934). Similarly, where a church building ceases to be used for an actual place of religious worship, its exemption terminates. Moore v. Taylor, 147 Pa. 481, 23 Atl. 768 (1892).

34. White v. Smith, 189 Pa. 222, 42 Atl. 125 (1899); Barnes Foundation v. Keely, 108 Pa. Super. 203, 164 Atl. 117 (1933). Tax day is important. If property is not exempt at the beginning of the year when taxes are due, the property is liable for taxes for the whole year even though later in the year it is devoted to an exemptible purpose. Philadelphia v. Pennsylvania Co. for Instruction of the Blind, 214 Pa. 138, 63 Atl. 420 (1906); Philadelphia v. Masonic Home, 33 Pa. Super. 382 (1894). However, if at the beginning of the year property is exempt from taxation, but during the midst of the year ceases to be used for an exemptible purpose, it is taxable proportionately for the unexpired part of the year. Moore v. Taylor, 147 Pa. 481, 23 Atl. 768 (1894).

35. Contributors to Pennsylvania Hospital v. Delaware County, 15 Pa. Co. Ct. 548 (1894) (barn used in emergency as a temporary hospital). Similarly, the fact that religious

charitable user be for every instant of the year. If the property is devoted *regularly and continually* to purposes which render it exempt, no taxes may be levied, since "it is the character of the user, not the amount of it that determines the title to exemption." [36] Particularly is that true where user is feasible during only a fraction of the year. Thus, an open air sanitarium used during the summer and fall in connection with a hospital,[37] and a farm used by a Y. W. C. A. as a summer recreation camp,[38] are not subject to taxation. Similarly, a school operated by a private institution of purely public charity might close for the summer, holidays, and weekends and yet remain exempt.[39]

But the problem of duration of the user is not nearly so difficult as that of the character of the user. As a general matter, the user, if *immediately* for the purposes of purely public charity, results in exemption—even though the income, if any, is applied to the reduction of expenses; if the use is *mediately* or indirectly for charitable objects, there is no exemption.[40] So, if the institution's property is used directly for profit in a money-making business in competition with private enterprise, even though the profit is thereafter devoted to ends of purely public charity, the property is liable to taxation.[41] A reformatory owns land which is cultivated by the inmates for the purpose of training them in agriculture, and the farm products are sold and the proceeds employed to defray the institution's expenses. The farm land is not taxable.[42] But a Y. M. C. A., which rents three floors of its five-story building at a lower rental than the usual price of rooms in commercial tenement houses, is, according to the recent *Y. M. C. A.* case, taxable as to the three floors so used, even though "members" unable to pay are admitted free and profits are applied to the maintenance of the "Y".[43] The farm land is being used strictly for the purpose of reforming delinquents. The "Y" is being used directly for profit and only indirectly for its charitable purposes.

This distinction is discernible in the Act of May 22, 1933, which grants an exemption to property of all institutions of purely public charity:

---

services are held at intervals during the summer upon a lot does not make it a regular place of stated worship. Grace M. E. Church v. Philadelphia, 23 Pa. Dist. 223 (1913).

36. Pennsylvania Hospital v. Delaware County, 169 Pa. 305, 309, 32 Atl. 456 (1905). To this effect are: Lancaster County v. Young Women's Christian Ass'n, 92 Pa. Super. 514 (1927); Dougherty v. Philadelphia, 112 Pa. Super. 570, 172 Atl. 177 (1934). And a church would not cease to be exempt because it is closed during the summer so that the rector may take a vacation. See Pennsylvania Hospital v. Delaware County, 169 Pa. 305, 309, 32 Atl. 456, 457 (1905).

37. Pennsylvania Hospital v. Delaware County, 169 Pa. 305, 32 Atl. 456 (1905).

38. Lancaster County v. Young Women's Christian Ass'n, 92 Pa. Super. 514 (1927).

39. See Dougherty v. Philadelphia, 112 Pa. Super. 570, 576, 172 Atl. 177, 179 (1934).

40. See, generally, Philadelphia v. Women's Christian Ass'n, 125 Pa. 572, 17 Atl. 475 (1889); Northampton County v. Lafayette College, 128 Pa. 132, 18 Atl. 516 (1889); Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892); Philadelphia v. Pennsylvania Hospital for the Insane, 154 Pa. 9, 25 Atl. 1076 (1893); Pennsylvania Hospital v. Delaware County, 169 Pa. 305, 32 Atl. 456 (1895); Barnes Foundation v. Keely, 314 Pa. 112, 171 Atl. 267 (1934); Mercersburg College v. Borough, 53 Pa. Super. 388 (1913); United Presbyterian Women's Ass'n v. Butler County, 110 Pa. Super. 116, 167 Atl. 389 (1933). This is also applicable to institutions of religious worship. Philadelphia v. Barber, 160 Pa. 123, 28 Atl. 644 (1890); Penial Holiness Ass'n's Appeal, 29 Pa. Dist. 488 (1919).

41. Appeal of Wagner Free Institute of Science, 116 Pa. 555, 11 Atl. 402 (1887); Mercantile Library Co. v. Philadelphia, 161 Pa. 155, 28 Atl. 1068 (1894); American Sunday School Union v. Philadelphia, 161 Pa. 307, 29 Atl. 26 (1894); Philadelphia v. Overseers, 170 Pa. 257, 32 Atl. 1033 (1895); Dougherty v. Philadelphia, 314 Pa. 298, 171 Atl. 583 (1934); Pocono Pines Assembly v. Monroe County, 29 Pa. Super. 36 (1905); Christian Ass'n of U. of Pa. v. Philadelphia, 75 Pa. Super. 516 (1921).

42. House of Refuge v. Smith, 140 Pa. 387, 21 Atl. 353 (1891).

43. Young Men's Christian Ass'n v. Philadelphia, 287 Atl. 204 (Pa. 1936), (1937) 85 U. OF PA. L. REV. 327; *cf.* (1933) 7 U. OF CIN. L. REV. 432.

"Provided, That the entire revenue derived by the same be applied to the support and to increase the efficiency and facilities thereof, the repair and the necessary increase of grounds and buildings thereof, and for no other purpose;[44] [but] all property . . . *other than that which is in actual use and occupancy for the purposes specified in this section,* and all such property from which any income or revenue is derived, other than from recipients of the bounty of the institution or charity, shall be subject to taxation. . . . ."[45]

But the Act makes an exception as to libraries, expressly exempting:

"all buildings owned and occupied by free, public, nonsectarian libraries, and the land on which they stand and that which is immediately and necessarily appurtenant thereto, notwithstanding the fact that some portion or portions of said buildings or lands appurtenant may be yielding rentals to the corporation or association managing such library: Provided, That the net receipts of such corporation or association from rentals shall be used solely for the purpose of maintaining the said library."[46]

The exemption of the property of an institution of purely public charity extends not only to the main lot and buildings, but, by statute, also to "grounds thereto annexed and necessary for the occupancy and enjoyment of"[47] the institution.[48] The words "grounds thereto annexed" do not mean that there must be geographical contiguity with the principal ground and buildings, but only that the lot and structures of the institution must be reasonably united in their common purpose and utility into a single "plant", the operation of which is dedicated to the fulfillment of purposes of purely public charity, even though the tracts are geographically unconnected,[49] and separated by a county line and by miles of distance.[50] In the Act of May 22, 1933, the words "annexed ground" and "immediately appurtenant land" are used,[51] but since the latter phrase is employed only in connection with libraries, in favor of which an unusual exception is made, the courts will probably construe it as embracing only geographically contiguous land belonging to libraries.

"Annexed ground" is not exempt unless "necessary" for the occupancy and enjoyment of the central property of the institution.[52] The necessity need not be absolute, but merely reasonable in the judgment of the managers of the institution, the word "necessary" being interpreted to mean "convenient and useful" for the immediate performance of purposes of purely public charity.[53] Two

44. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (c).

45. *Id.* (l). Italics supplied.

46. *Id.* (k). See Appeal of Wagner Free Institute, 116 Pa. 555, 11 Atl. 402 (1887); Mercantile Library Co. v. Philadelphia, 161 Pa. 155, 28 Atl. 1068 (1894).

47. PA. STAT. ANN. (Purdon, Supp. 1936) tit. 72, § 5020-204 (c).

48. Similarly, actual places of religious worship. Pittsburg v. Third Presbyterian Church, 20 Pa. Super. 362 (1902); Laymen's Week-end Retreat League v. Butler, 83 Pa. Super. 1 (1924).

49. House of Refuge v. Smith, 140 Pa. 387, 21 Atl. 353 (1891); Pennsylvania Hospital v. Delaware County, 169 Pa. 305 (1895); Barnes Foundation v. Keely, 314 Pa. 112, 171 Atl. 267 (1934); National Farm School v. Bucks County, 87 Pa. Super. 231 (1926); Lancaster County v. Young Women's Christian Ass'n, 92 Pa. Super. 514 (1927); *cf.* Philadelphia v. Ladies United Aid Soc., 154 Pa. 12, 25 Atl. 1042 (1893).

50. House of Refuge v. Smith, 140 Pa. 387, 21 Atl. 353 (1891).

51. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204, (k) in particular.

52. Thiel College v. Mercer County, 101 Pa. 530 (1882).

53. Barnes Foundation v. Keely, 314 Pa. 112, 171 Atl. 267 (1934); Lancaster County v. Young Women's Christian Ass'n, 92 Pa. Super. 514 (1917); United Presbyterian Women's Ass'n v. Butler County, 110 Pa. Super. 116, 167 Atl. 389 (1933); Foerderer v. Philadelphia,

cases decided by the Pennsylvania Superior Court in the same term illustrate the difficulty again with the word "immediate". In *Foerderer v. Philadelphia,*[54] where a medical research foundation used part of its land to grow feed for rabbits used for experimental work, such land was held subject to tax. Although convenient and useful, it was used only indirectly for a charitable purpose, the feeding of rabbits being not in itself charitable nor even public. But in *United Presbyterian Women's Ass'n v. Butler County,*[55] the farm of an orphanage which was cultivated by inmates was declared exempt, since the presence of the farm and the activities upon it in which the orphans participated contributed directly to the execution of the home's objectives—the care and training of the orphans. The Act of May 22, 1933, employs the phraseology "necessary" and "reasonably necessary",[56] but it would seem that under the decisions the terms are synonymous.

Pervading all these decisions is the philosophy expressed by the court in the *Y. M. C. A.* case that no exemption should be allowed unless the institution is one "which by its charitable activities relieves the government of part of this burden (of paternalism)," so that "in receiving exemption from taxation it is merely being given a 'quid pro quo' for its services in providing something which otherwise the government would have to provide." [57]

H. G.

---

111 Pa. Super. 328, 170 Atl. 708 (1934). Marshall's definition of "necessary" in M'Cullough v. Maryland, 4 Wheat. 316 (U. S. 1819), is relied upon.

The following have been held exempt: a faculty residence on the campus [Northampton County v. Lafayette College, 128 Pa. 132, 18 Atl. 516 (1889)]; residences of school administrative officers on the campus [Thiel College v. Mercer County, 101 Pa. 530 (1882)]; the campus residence of the gardener (*ibid.*); the school gymnasium, athletic field and playground [Lancaster County v. Young Women's Christian Ass'n, 92 Pa. Super. 514 (1927); Dickinson College v. Cumberland County, 2 Pa. Dist. 378 (1893); Chester v. Prendergast, 4 Del. Co. Rep. 224 (1916)]; school campus [Bryn Mawr College v. Montgomery County, 34 Montg. Co. Rep. 114 (1889)].

The following are not exempt: a parsonage [Church of Our Saviour v. Montgomery County, 10 W. N. & Cas. 170 (1881); Parsonage Taxes, 25 Pa. Co. Ct. 570 (1901); *In re* Taxation of Central M. E. Church, 11 Kulp 131 (1901)]; a janitor's residence upon church ground [Pittsburg v. Third Presbyterian Church, 10 Pa. Super. 302 (1899)]; church refectory and sleeping quarters [Laymen's Week-end Retreat League v. Butler, 83 Pa. Super. 1 (1924)].

But a parsonage is exempt if it is part of the church building. Northampton County v. St. Peter's Church, 5 Pa. Co. Ct. 416 (1888). The portion of a parsonage devoted to the parson's office as principal of the parochial school is exempt, Dougherty v. Philadelphia, 314 Pa. 298, 171 Atl. 583 (1934), as is a convent used as a residence of nuns who act as teachers, White v. Smith, 189 Pa. 222, 42 Atl. 125 (1899). Ground for entrance and exit of air and light is necessary to a church, and consequently exempt. First Presbyterial Church Appeal, 20 Berks Co. Rep. 242 (1928); but ground used as a short-cut to a church is not necessary, Grace M. E. Church v. Philadelphia, 23 Pa. Dist. 222 (1913). Where one floor of the building of a religious institution is used for the storage of effects belonging to the institution, that floor is necessary and exempt. Chevra Achewa v. Philadelphia, 116 Pa. Super. 101, 176 Atl. 779 (1935).

54. 111 Pa. Super. 328, 170 Atl. 708 (1934).

55. 110 Pa. Super. 116, 167 Atl. 389 (1933). Accord: House of Refuge v. Smith, 140 Pa. 387, 21 Atl. 353 (1891).

56. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204.

57. 187 Atl. 204, 210 (Pa. 1936). And yet a foreign charitable institution has been allowed to hold realty in Pennsylvania free from taxation, even though Pennsylvania is relieved of no burden, on the ground that "the use to which the institution applies its property, and not the corporate origin of the institution", determines the allowance of the exemption! Camden County Council, Boy Scouts of America v. Bucks County, 13 Pa. D. & C. 213 (1929) (N. J. scouts had camp in Pa.). A leading case *contra* is Laymen Foundation v. Louisville, 232 Ky. 259, 22 S. W. (2d) 622 (1929).