Tax-Exemption of Non-Public School Property

Cornelia A. Johnson

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TAX-EXEMPTION OF NON-PUBLIC SCHOOL PROPERTY

BY

CORNELIA A. JOHNSON

A Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Master of Arts in Loyola University Chicago June, 1941
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CHAPTER I

INTRODUCTION

The problem of the use of public funds for the support of the so-called non-public school is of great present concern. This problem arose largely as far as present interest is concerned with the publication of the report of the President's Committee in 1938, including the controversial "private" schools recommendation:

Consideration should be given, however, to the fact that large numbers of children receive instruction in non-public schools, and that the maintenance of schools under non-public auspices results in a significant reduction in public expense. Many of the services of public schools should be available to children regardless of whether they are enrolled in public schools for instruction. It is therefore recommended that such portions of the general aid as may be allocated in the joint plans for the purchase of reading materials, transportation, and scholarships be made available so far as Federal Legislation is concerned for the benefit of pupils both in public and in non-public schools. The Committee also recommends that local public schools receiving Federal aid be authorized to make their health and welfare services available to pupils in non-public schools. The conditions under which health and welfare services and aid for reading materials, transportation, and scholarships may be made available for pupils in privately controlled schools, should be determined by the States, or by the local school jurisdictions receiving the grants if the states so determine.¹

An aspect of this problem of support of non-public education unmentioned by the President's Committee, is that of tax-exemption. No one

thus far has made an adequate investigation of the status of tax-exemption of the non-state schools. It should be borne in mind that the present research is motivated by an attempt to evaluate impartially the chances for survival or betterment of non-public schools through tax-exemption.

I. THE PROBLEM

Statement of the problem. Fundamental laws have been adopted from time to time by the respective states for their government. These basic laws are known as constitutions, and they furnish the foundation for statutory enactments. Educators assume that by the enactment of the tenth amendment to the Federal Constitution, each state is free to establish its educational system as it desires, and this the states have done in their constitutions. In addition laws have been passed by the state legislatures and the courts have interpreted these laws.

The purpose of this investigation is to analyze the constitutional provisions, statutory provisions, and court decisions of the forty-eight states as they relate to tax-exemption of non-public school property. More specifically, the present investigation has reported upon the nature and extent of tax-exemption for non-state schools as found in the forty-eight states, and through an analysis and a comparison of the decisions of the highest courts of each of the states formulated a definite outline of the current status of tax-exemption of non-public school property.

Importance of the study. It is evident from the fact that so little has been written bearing directly on tax-exemption of non-public schools that the problem may be considered a neglected one in our educational system. The need for this tax-exemption is nevertheless present. "All private
and parochial schools of any regular type, as well as technical institutions and free libraries and museums, do a work that the State would be called upon to do, at least in part, if these non-state institutions were not at work on the problem. Since they accordingly relieve the state and the locality of an important financial burden it is quite proper that they be allowed some return for what they do. 2

The latest statistics show an enrollment of 26,367,098 pupils in continental United States in 1936 for public elementary and secondary schools, exclusive of kindergarten. The enrollment in private and parochial schools for the same year including kindergarten was listed as 2,638,775 pupils. 3

II. PROCEDURE

Constitutions examined. An examination was made of the state constitutions and the numerous amendments thereto in order to obtain the provisions concerning tax-exemption of non-public school property as of September first, nineteen hundred and forty. To do this involved reading not only the articles and amendments of each constitution, but also meant the careful study of any article of the constitution which might contain a provision for tax-exemption. This data was noted on cards, for each of the forty-eight states in chronological order. After this part of the work had been done the data was transferred to typewritten pages, under subject headings, for convenience in classification and assimilation.

State statutes examined. To ascertain statutory enactments for tax-exemption, a study was made of the revenue or taxation section of the revenue or taxation section of the

statutes of the forty-eight states. Wherever possible, the annotated statutes were used, in order to obtain the courts' interpretation of the statutory provisions.

Court Opinions. "Exemption from taxation is the exception to the rule that all property is liable to contribute to the common burden and such exemption is not favored in law. It can be allowed only when granted in clear terms, and can never be presumed. The intention of the legislature must govern in ascertaining the extent of an exemption." It is the duty of the courts to interpret and determine the intention of the legislature, and where that is an impossibility it rests with the courts directly to interpret the words of the constitution. Thus definite wording or implication in the constitution is construed by the courts.

III. RELATED RESEARCH

In so far as it has been possible to determine, no similar investigation has been completed and reported. Cronin, in a bulletin of Fordham University Educational Research Institute, has reported in detail on aid to non-public schools apart from tax-exemption, as well as listing the constitution of nineteen states which expressly give power to the legislature to exempt private schools from taxation, the constitutions of fourteen other states which stipulate that the legislature shall exempt private school property from taxation, under certain conditions and to a stated degree. Cronin's study is restricted in that it includes no investigation of judicial interpretations of constitutional provisions. Gabel enumerates state

constitutional and statutory provisions and judicial decisions (1865-1936), but he has been concerned primarily with the question as to whether or not public funds should be used for the subsidation of church and private schools. Trusler is primarily concerned with public school property; but he refers to court decisions in the chapter "Exemption of School Property From Taxation."

In the April 1939 issue of the National Education Publication the Research Division compiled data in regard to the extent and under what legislative conditions state aid is extended to private and sectarian schools. This research was presented in four parts. Part II was concerned with the "provisions with regard to exemptions from taxation of private and sectarian school property." No material was found on this subject in regard to several of the states. Most of the material presented consisted of quotations from the constitutions granting tax-exemption or stating that the legislature had the power to do so. Except for the citing of a Florida case, no attempt was made to set up the judicial decisions exempting non-public school property from taxation. The research was concerned principally with state aid to private and sectarian schools.

IV. ORGANIZATION OF REMAINDER OF THE THESIS

Chapter II presents the constitutional provisions for tax-exemption, classified as permissive and mandatory. Chapter III analyzes the statutory provisions with their limitations. Chapter IV reveals the court decisions as they relate to constitutional and statutory interpretation.

6. Richard J. Gabel, Public Funds for Church and Private Schools.
8. State Aid to Private and Sectarian Schools (Revised Edition), Research Division of the National Education Association of the United States, 1939.
Chapter V is a summary of the study from which are drawn conclusions as to the provisions for or the possibility of tax-exemption in the forty-eight states.
CHAPTER II

CONSTITUTIONAL PROVISIONS

Much has been written in regard to the position of private and parochial schools in the various states. Attention has been called to the useful and meritorious work of these schools, to the friendly competition of private and parochial schools with public schools, which as a result has often set "new standards for work, done many things in advance of what the state schools would attempt, paved the way for future state action in many lines, and in addition has educated many for the service of the State from their own resources and without cost to the State." Very little has been written on how to compensate these schools for their share of the educational burden of the State or on what can be done legally, at present, toward reimbursing their valuable contributions. A common constitutional provision has forbidden the appropriation from any public fund, or the grant of any public land in aid of any sectarian or denominational school. Let us consider what the state constitutions will permit and do provide for tax-exemption as a means of subsidization.

EXEMPTION BY GENERAL LAW

Twenty-five states, Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Miss-

2. Ibid., p. 713.
Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, North Dakota, South Dakota, Texas, Virginia, Washington, West Virginia, and Wyoming grant exemption by general law in their respective constitutions. These exemptions are both permissive and mandatory. Twenty-three of these states, Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming are permissive in their provision for exemption. This permission is based on various limitations.

All property exempt. Seventeen of these states, Alabama, Arizona, California, Colorado, Florida, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Nebraska, New Mexico, New York, North Carolina, Virginia, Washington, and West Virginia provide that all property of educational associations or institutions may be exempt by law.

Constitution of Arizona (1910), Article IX, Section 2.
Constitution of California (1879), Article XIII, Section 1.
Constitution of Colorado (1876), Article X, Section 5.
Constitution of Delaware (1897), Article VIII, Section 1.
Constitution of Florida (1885), Article IX, Section 1.
Constitution of Georgia (1877), Article VII, Section 2.
Constitution of Idaho (1890), Article VII, Section 5.
Constitution of Illinois (1870), Article IX, Section 3.
Constitution of Indiana (1851), Article X, Section 1.
Constitution of Kentucky (1901), Amendments to 1936, Section 170.
Constitution of Louisiana (1921), Article X, Section 4.
Constitution of Mississippi (1890), Article IV, Section 90.
Constitution of Missouri (1875), Article X, Section 6.
Constitution of Nebraska (1875), Article VIII, Section 2.
Constitution of Nevada (1926), Article VIII, Section 132.
Constitution of New Mexico (1911), Article VIII, Section 3.
Constitution of New York (1938), Article XVI, Section 1.
Constitution of North Carolina (1868), Article V, Section 5.
Constitution of North Dakota (1889), Article XI, Section 176.
Constitution of South Dakota (1889), Article XI, Section 6.
Constitution of Texas (1876), Article VIII, Section 2.
Constitution of Virginia (1902), Article XIII, Section 183.
Constitution of Washington (1889), Amendment XIV.
Not conducted for profit. Nine states, Arizona, California, Colorado, Georgia, Kentucky, Louisiana, Nebraska, New York, and Virginia may allow exemption if the schools are not conducted for profit.  

Kinds and amount of property exempt. Seven states, Alabama, California, Colorado, Missouri, Nebraska, New York, and Texas have provided for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes. Alabama and Missouri provide that lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon may be exempt from taxation when the same are used exclusively for schools. In California, the grounds within which the buildings are located not exceeding one hundred acres in area are exempt. In Colorado the property must be used solely and exclusively for schools. Nebraska, property owned and used exclusively for educational purposes may be exempt. In New York the property must be used for educational purposes as defined by law and owned by any corporation or association conducted exclusively for one or more of such purposes. Texas, all buildings used exclusively and owned by persons or association of persons for school purposes may be exempt.

3. (continued)
Constitution of West Virginia (1872), Article X, Section 1.
Constitution of Wyoming (1890), Article XV, Section 12.

Buildings and Use. Georgia provides that all buildings erected for and used as a college, incorporated academy, or other seminary of learning may be exempt by law.

Encouragement of education. Two states, Michigan and Vermont recognizing that knowledge is necessary to good government and the happiness of mankind foster and protect seminaries of learning in the enjoyment of the privileges, immunities and estates which these educational institutions ought to enjoy under such regulations as the General Assembly of said states shall direct.

15. Constitution of Vermont (Amended 1924), Chapter II, Section 64.
SUMMARY

Alabama

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.

Arizona

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. May allow exemption, if the schools are not conducted for profit.

California

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.
4. May allow exemption, if the schools are not conducted for profit.

Colorado

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.

3. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.

4. May allow exemption, if the schools are not conducted for profit.

Delaware

1. Grants exemption by general law in its constitution.

Florida

1. Grants exemption by general law in its constitution.

2. Provides that all property of educational associations or institutions may be exempt by law.

Georgia

1. Grants exemption by general law in its constitution.

2. May allow exemption, if the schools are not conducted for profit.

Idaho

1. Grants exemption by general law in its constitution.

Illinois

1. Grants exemption by general law in its constitution

2. Provides that all property of educational associations or institutions may be exempt by law.

Indiana

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.

Kentucky

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. May allow exemption, if the schools are not conducted for profit.

Louisiana

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. May allow exemption, if the schools are not conducted for profit.

Mississippi

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.

Missouri

1. Grants exemption by general law in its constitution.
2. May allow exemption, if the schools are not conducted for profit.

Nebraska

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.

4. May allow exemption, if the schools are not conducted for profit.

Nevada

1. Grants exemption by general law in its constitution.

2. Provides that all property of educational associations or institutions may be exempt by law.

New York

1. Grants exemption by general law in its constitution.

2. Provides that all property of educational associations or institutions may be exempt by law.

3. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.

4. May allow exemption if the schools are not conducted for profit.

North Carolina

1. Grants exemption by general law in its constitution.

2. Provides that all property of educational associations or institutions may be exempt by law.

North Dakota

1. Grants exemption by general law in its constitution.
South Dakota

1. Grants exemption by general law in its constitution.

Texas

1. Grants exemption by general law in its constitution.
2. Provides for the exemption of certain types, and stipulated amounts of property when said property is used exclusively for educational purposes.

Virginia

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.
3. May allow exemption, if the schools are not conducted for profit.

Washington

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.

West Virginia

1. Grants exemption by general law in its constitution.
2. Provides that all property of educational associations or institutions may be exempt by law.

Wyoming

1. Grants exemption by general law in its constitution.
CHAPTER III

STATUTORY PROVISIONS

The preceding chapter is concerned with the constitutional provisions regarding the rights of the various states to exempt or permit exemption of non-public school property from taxation. The state constitutions of the several states grant exemptions or leave it to the will of the state legislators. The function of this chapter is to show how several state legislatures have dealt with the problem left to them. In order to do this, a survey was made of the appropriate statutes of the forty-eight states.

Not conducted for profit. Twenty-one states, Arizona, 1 California, 2 Colorado, 3 Georgia, 4 Illinois, 5 Indiana, 6 Idaho, 7 Kentucky, 8 Massachusetts, 9 Nebraska, 10 Nevada, 11 New Hampshire, 12 New Jersey, 13 New York, 14 North Carolina, 15 North Dakota, 16 Tennessee, 17 Texas, 18 West Virginia, 19 Wisconsin, 20 and Wyoming, 21 all grant exemption of property if the educational institution is not conducted for profit. Arizona 22 exempts lands not used or held for profit. California 23 exempts an educational institution of collegiate grade if it is not conducted for profit and is conducted

1. Arizona, Revised Code of 1928, Ch. 75, Article 2, Sec. 3056.
2. California, Code of 1939, Article 1, Sec. 203.
3. Colorado, Code of 1935, Ch. 142, Article 3, Sec. 22.
4. Georgia, 1919, Ch. 92-2 and Ch. 92-201.
5. Illinois, 1935 Ch. 120, Sec. 500.
6. Indiana, Code of 1932, Title 61, Sec. 105.
7. Idaho, Code of 1939, Title 63, Ch. 2, Sec. 64-201.
8. Kentucky, Code of 1936 Ch. 108, Article 1, Sec. 4026.
10. Nebraska, Code of 1929, Ch. 77, Article 2, Sec. 202

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exclusively for scientific or educational purposes and no part of its net income imures to the benefit of any private person. Colorado and Georgia permit exemptions if the schools are not held or conducted for private or corporate profit.

Illinois exempts all property of schools, including the real estate on which the schools are located and any other real estate used by such schools exclusively for school purposes not leased by such schools or otherwise used with a view to profit. Indiana and Idaho permit exemption of educational property if it is not used for private profit or leased with a view to pecuniary profit. Kentucky exempts institutions of education not used or employed for gain by any person or corporation. Massachusetts grants no exemption, if the income or profits are distributed among the stockholders or members or is used for any other purpose than education. Nebraska exempts educational property when such property

12. New Hampshire, Code of 1926, Title 9, Ch. 60, Sec. 22.
14. New York, Code of 1930, Ch. 61, Article 1, Sec. 4.
15. North Carolina, Code of 1939, Ch. 131, Article 1, Sec. 7880. (2)
16. North Dakota, Code of 1913, Ch. 34, Article 3.
17. Tennessee, Code of 1938, Title 5, Article 4, Sec. 1085.
18. Texas, Code of 1936, Title 122, Article 7150.
19. West Virginia, 1937, Ch. 11, Article 3, Sec. 678. (9).
20. Wisconsin, Ch. 70, Sec. 7011 (4).
21. Wyoming, Ch. 115, Article 1, Sec. 115.
22. "op. cit."
23. "op. cit."
24. "op. cit."
25. "op. cit."
26. "op. cit."
27. "op. cit."
28. "op. cit."
29. "op. cit."
30. "op. cit."
31. "op. cit."
is not owned or used for financial gain or profit to either the owner or user. Nevada\textsuperscript{32} exempts non-profit schools with lots appurtenant thereto, and furniture and equipment. New Hampshire,\textsuperscript{33} New York,\textsuperscript{34} and Tennessee\textsuperscript{35} will grant exemption on the real estate property of a corporation or association organized for educational purposes if no officer, member or no one employed thereof shall receive or be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting its educational purposes. New Jersey\textsuperscript{36} exempts buildings or the lands on which they stand or the associations, corporations or institutions using and occupying them if not conducted for profit. North Carolina\textsuperscript{37} exempts educational corporations, where such institutions and corporations are located within the state and not conducted for profit. North Dakota,\textsuperscript{38} Texas,\textsuperscript{39} West Virginia,\textsuperscript{40} Wisconsin,\textsuperscript{41} and Wyoming\textsuperscript{42} provide for the exemption of educational property not leased or otherwise used with a view to profit.

\textbf{Kind and Amount of Property Exempt.} Twenty states exempt property with some limitations. These states are Arizona,\textsuperscript{43} Colorado,\textsuperscript{44} Georgia,\textsuperscript{45} Indiana,\textsuperscript{46} Iowa,\textsuperscript{47} Kansas,\textsuperscript{48} Maine,\textsuperscript{49} Maryland,\textsuperscript{50} Mississippi,\textsuperscript{51} Iowa, Code of 1939, Ch. 330, Sec. 6944. 48. Kansas, Code of 1935, 79-201. 49. Maine, Code of 1930, Ch. 15, Article 7, Sec. 6. 50. Maryland, Code of 1924, Article 81, Sec. 4. 51. Mississippi, Code of 1930, Ch. 61, Sec. 3108.
Missouri, 52 Nevada, 53 New Jersey, 54 New York, 55 North Dakota, 56 Rhode Island, 57 South Carolina, 58 Texas, 59 Washington, 60 West Virginia, 61 and Wisconsin. 62 Arizona 63 exempts colleges, school-houses, and other buildings used for education, with their furniture, libraries, and equipment and the lands thereto appurtenant and used therewith. Colorado 64 exempts grounds with the buildings thereon if the said buildings are used exclusively for educational purposes. Georgia 65 provides exemption for all buildings erected for and used as a college, incorporated academy or other seminary of learning. Indiana 66 in its provision includes every building used and set apart for educational purposes by any institution or by any individual or individuals, associations, or corporation and the tract of land on which such building is situated, including the campus and athletic grounds of any educational institution not exceeding fifty acres, also the lands purchased with the bona-fide intention of erecting buildings for such use thereon, not exceeding forty acres. Iowa, 67 exempts all grounds and building used by literary, scientific, and religious institutions and societies solely for their appropriate objects, not exceeding 320 acres in extent. Kansas 68 provides that the portion of any building and the ground

52. Missouri, Code of 1929, Ch. 59, Article 1, Sec. 9743.
53. op. cit.
54. op. cit.
55. op. cit.
56. op. cit.
57. Rhode Island, Code of 1933, Title 6, Ch. 29, Sec. 2.
58. South Carolina, 1932, Ch. 106, Article 3, Sec. 2478.
59. op. cit.
60. Washington, Code of 1933, Title 78, Ch. 3.
61. op. cit.
62. op. cit.
63. op. cit.
64. op. cit.
65. op. cit.
66. op. cit.
67. op. cit.
68. op. cit.
upon which such building stands, belonging to any educational corporation shall be wholly exempt from taxation. Maine\textsuperscript{69} provides that any college in this state authorized under its charter to confer the degree of Bachelor of Arts, or Bachelor of Science, and having real estate liable to taxation, shall, on the payment of such tax and proof of the same to the satisfaction of the Government and Council be reimbursed from the state treasury to the amount of the tax so paid; provided, however, that the aggregate amount so reimbursed to any college in any one year shall not exceed $1500; and provided, further, that this claim for such reimbursement shall not apply to real estate bought by any such college after the twelfth day of April, 1889.

Maryland\textsuperscript{70} will not permit the exemption of property in excess of forty acres and this amount must be necessary for the respective uses of the educational institution. Mississippi\textsuperscript{71} will not permit the exemption of more than 640 acres of land for any college or institution for the education of youth. Missouri\textsuperscript{72} exempts lots in incorporated cities or towns, or within one mile of the limits of any such city or town to the extent of one acre, and lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, when the same are used exclusively for schools. Nevada\textsuperscript{73} permits the exemption of private

\textsuperscript{69} op. cit.
\textsuperscript{70} op. cit.
\textsuperscript{71} op. cit.
\textsuperscript{72} op. cit.
\textsuperscript{73} op. cit.
schools with lots appurtenant thereto and furniture and equipment if other requirements are met with. New Jersey in its law exempts "all buildings actually used for colleges, schools, academies, or seminaries; the land whereon any of the buildings are erected and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed 50 acres in extent."

New York permits the exemption of the real property of a corporation or association organized for educational purposes and used exclusively for carrying out such purposes or any portion of a lot or building of any such corporation or association which is used for educational purposes but such lot of building shall be so exempt only to the extent of the value of the portion so used. The statute also provides for the exemption of property of any such corporation or association although the property is not in actual use for educational purposes by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated. North Dakota exempts all academies, colleges, and institutions of learning with the books and furniture therein and the grounds attached to such buildings necessary for their proper occupancy, use, and enjoyment, not to exceed forty acres in area. Rhode Island explicitly exempts buildings and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one acre if owned by an institution for religious or educa-

74. op. cit.
75. op. cit.
76. op. cit.
77. op. cit.
tional purposes; also the buildings and personal estate owned by any corporation used for a school, academy or seminary of learning. South Carolina provides for the exemption of all lands and buildings and the contents thereof that may be owned by any religious society or denomination and used exclusively for the convenience of any activities or work of such society or denomination. Provided, that the lands hereby exempt shall in no single case exceed two acres. Texas exempts all buildings used exclusively and owned by persons or associations of persons for school purposes. Washington exempts "all property, real and personal, owned by any school or college in the state, supported in whole or in part by gifts, endowments or charity, the entire income of which said school or college, after paying the expenses thereof, is devoted to the purpose of such institution. Provided further, that the real property so exempt shall not exceed ten acres in extent, except, however, that any school of collegiate grade and accredited by the state board of education shall be entitled to an exemption of not more than forty acres of real property, but no corporation shall be entitled to more than one such larger exemption, and where the college is under the direction or control of any religious denomination such larger exemption shall be allowed to one college only directed or controlled by such religious denomination." West Virginia provides that property belonging to colleges, seminaries, academies and free schools if used for

78. op. cit.
79. op. cit.
80. op. cit.
81. op. cit.
educational purposes shall be exempt. Wisconsin\textsuperscript{82} exempts real property of an educational association necessary for the location and convenience of the buildings of such institutions or associations and embracing the same, not exceeding ten acres, and the lands reserved for grounds of a chartered college or university, not exceeding eighty acres.

\textbf{Property Used Exclusively for Education Exempt.} Twelve states, Arizona, Colorado, Illinois, Kentucky, Mississippi, Montana, Nebraska, New York, South Dakota, Texas, Washington, and Wisconsin permit this exemption.

Arizona\textsuperscript{95} exempts lands used for the purpose of education. Colorado\textsuperscript{96} and Illinois\textsuperscript{97} permit exemption if said buildings are used exclusively for school purposes. Kentucky\textsuperscript{98} provides for the exemption if institutions of education not used or employed for gain and the income of which is devoted solely to the cause of education. Mississippi\textsuperscript{99} exempts all property used directly and exclusively for educational purposes. Montana\textsuperscript{100} likewise exempts from taxation such property as is used exclusively for educational purposes. In Nebraska the property must be owned and used exclusively for educational purposes. New York\textsuperscript{102} exempts the real property of a corporation or association organized and exclusively for educational purposes.
cational purposes, and used exclusively for carrying out thereupon such purposes, as well as the personal property of any such corporation. In South Dakota all property, both real and personal, belonging to any educational institution in the state and all property used exclusively by and for the support of such institution is exempt. Texas provides for the exemption of all buildings used exclusively and owned by persons or associations of persons for school purposes. Washington exempts all property, real and personal owned by any school or college in the state supported in whole or in part by gifts, endowments or charity, the entire income of which said college or school, after paying the expenses thereof, is devoted solely to the purpose of education. In Wisconsin real property necessary for the location and convenience of the building is exempt.


Arizona provides that land necessary for educational purposes may be exempt.

103. op. cit.
104. op. cit.
105. op. cit.
106. op. cit.
107. Arizona, Revised Code of 1928, Ch. 14, Article 3, Sec. 604.
108. Florida, Code of 1927, Title 6, Ch. 1, Sec. 897 (3).
109. op. cit.
110. op. cit.
111. op. cit.
112. Oklahoma, Code of 1937, Title 68, Ch. 2, Subsec. 23.
113. op. cit.
114. Virginia, Tax Code, Ch. 27, Sec. 435.
115. op. cit.
116. op. cit.
117. op. cit.
Florida, New Hampshire, Oklahoma, and Washington exempt such property as is needed by an educational institution for the purposes for which they have been or may be organized. Massachusetts provides for the exemption of real estate of literary and scientific institutions for the purposes for which they are incorporated and real estate purchased by them with the purpose of removal thereto until such removal, but not more than two years after such purchase. Montana exempts property for educational purposes, but no more land than is necessary for such purposes. Tennessee exempts the real estate owned by any educational institution if it carried out one or more of the purposes for which said institution was created or exists. Virginia and Wyoming permit the exemption of property primarily used for educational purposes.

Property for the Establishment and Endowment of Institutions of Learning Exempt. Seven states, Arizona, Georgia, Indiana, Iowa, Texas, Washington, and Wisconsin carry this exemption. Arizona exempts the property of its state used for the establishment and endowment of institutions of learning. Georgia exempts all funds or property held or used as endowments by colleges, incorporated academies or seminar-

| 118. op. cit. | 119. op. cit. | 120. op. cit. | 121. op. cit. | 122. op. cit. | 123. op. cit. | 124. op. cit. | 125. op. cit. | 126. op. cit. | 127. op. cit. | 128. op. cit. | 129. op. cit. | 130. op. cit. | 131. op. cit. | 132. op. cit. | 133. op. cit. | 134. op. cit. | 135. op. cit. | 136. op. cit. |
and interests thereon, belonging to any institution connected with, used or set apart for educational purposes. Also, any money or personal property given by will or otherwise to any executive or other trustee to be by him used and applied for the use and benefit of any educational purposes within the state. Iowa will exempt any real estate owned by any educational institution of the state as a part of its endowment fund to the extent of 160 acres in any civil township. Texas exempts endowment funds of institutions of learning not used with a view to profit and when the same are invested in bonds or mortgages. Washington provides for the exemption of educational property supported in whole or in part by endowments. Wisconsin provides that the endowment funds and the real and personal estate of any corporation formed solely to encourage the fine arts organized under the laws of this state, without capital stock and paying no dividends or pecuniary profits.

*Academies, Colleges and Universities are Exempt.* Six states, Minnesota, Mississippi, New Hampshire, North Dakota, Pennsylvania, and West Virginia, grant this exemption. Minnesota provides that all academies, colleges and universities and all seminaries of learning shall be exempt from taxation. Mississippi exempts all property real and personal belonging to any college or institution for the education of youths, used directly and exclusively for such purposes. New

137. *op. cit.*  
138. *op. cit.*  
139. *op. cit.*  
140. *op. cit.*  
142. *op. cit.*  
143. New Hampshire, Code of 1926, Title 9, Ch. 60, Sed. 22.  
144. *op. cit.*  
145. Pennsylvania, 1931, Title 72, Sec. 4701.
Hampshire exempts real estate whether improved or unimproved if the property is a school house or seminary of learning. North Dakota exempts academies, colleges and institutions of learning with the books and furniture therein and the grounds attached to such buildings necessary for their proper occupancy. Pennsylvania exempts all universities, colleges, seminaries, academies, associations and institutions of learning with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same. West Virginia exempts the property belonging to colleges, seminaries, academies and free schools if used for educational purposes including the books, apparatus, annuities, money and furniture.

Property Actually Occupied by an Educational Institution is Exempt. Five states, Florida, New Jersey, Oregon, South Dakota, and Tennessee, grant this exemption. Florida provides that property of an educational institution within the state is exempt if it is actually occupied and used for the purposes for which the institution was organized. New Jersey exempts all buildings actually used for colleges, schools, academies or seminaries; the land whereon any of the buildings are erected, and which may be necessary for the fair enjoyment thereof and which is devoted to the purposes above mentioned and to no other purpose. Oregon

149. op. cit.
150. op. cit.
151. op. cit.
152. op. cit.
153. op. cit.
154. op. cit.
155. op. cit.
156. op. cit.
157. op. cit.
158. op. cit.
159. op. cit.
160. op. cit.
exempts the real property of a literary or scientific institution if it is actually occupied for the purposes for which the institution was incorporated. South Dakota provides that if any property of an educational institution such as farm lands or of improved town or city property is not occupied or directly used in the carrying out of the primary object of the educational institution owning the same it shall not be exempt. Tennessee exempts the real estate of an educational institution if it is occupied by such institution or its officers.

Legacies Not Taxed. Four States, Connecticut, Delaware, Indiana, and North Carolina do not tax legacies. Connecticut provides that the funds and estates which have been or may be granted, provided by the state or given by any person or persons to the trustees of the Berkeley Divinity School, the board of trustees of Connecticut College for Women, the Hartford Seminary Foundation, Sheffield Scientific School, Trinity College, Wesleyan University, or the President and Fellows of Yale College in New Haven, and by them respectively invested and held for the use of such institutions, shall, with the income thereof, remain exempt from taxation. Delaware merely provides that legacies for educational purposes shall not be subject to taxation. Indiana provides that any money or personal property given by will or otherwise to any executor or other trustee to be by him used and applied for the use and benefit of any educational institution within the state shall be exempt from taxation.

North Carolina exempts property passing to educational corporations.

161. op. cit.
162. op. cit.
163. Connecticut, Ch. 62, Sec. 1163-1166, Sec. 1173.
164. Delaware, Code of 1935, Ch. 44, Sec. 1258.
165. op. cit.
166. op. cit.
167. op. cit.
168. op. cit.
169. op. cit.
170. op. cit.
where such institutions and corporations are located within the state and not conducted for profit.

Assessor to Determine What Part of Property Exempt; Filing Necessary. Four states, Connecticut, Texas, Washington, and West Virginia permit exemption, but the Board of Assessors must inspect the statements filed with it and determine what part, if any, of the property shall in fact be exempt. Connecticut demands that a statement on forms prepared by the tax commissioner shall be filed on or before the last day required by law for the filing of assessment returns with the local board of assessors of any town, consolidated town and city, or consolidated town and borough, in which any of its property claimed to be exempt is situated. The board of assessors shall inspect the statements filed with it and required by section 1163 and 1164 from educational organizations, and shall determine what part, if any, of the property claimed to be exempt by the organization shall be in fact exempt. Texas provides that schools deserving the right of exemption of their properties shall first prepare and file with the tax assessor of the county in which such property is situated, a complete itemized statement of all of said property, any and every kind whatsoever, which is claimed to be exempt from taxation under the provisions of this particular law and all property not so listed shall be assessed. Washington will not permit any exemption

171. op. cit. Sec. 1166.
172. op. cit.
173. op. cit.
174. op. cit.
175. op. cit.
176. op. cit.
177. op. cit.
allowed to educational institutions until the institution claiming such exemption shall file with the county assessor of the county wherein such property is situated and subject to taxation; on or before the first day of March in such year. West Virginia provides that the property, both real and personal, which is exempt from taxation by Section 678 (9) shall be entered upon the assessor's books together with the true and actual value thereof, but no taxes shall be levied upon the same.

Exemption Not to Extend to Leasehold Estates or Real Property.

Four states, Arkansas, Ohio, South Carolina, and Texas do not grant exemption to leasehold estates or real property held under the authority of a college or university of learning in their respective states.

Money and Credits Belonging Exclusively to Institutions, Exempt.

Three states, Iowa, Kansas, and West Virginia carry the above provision. Iowa provides that money and credits belonging exclusively to the institution allowed under subsection 9 and devoted solely to sustaining them, but not exceeding in amount, or income prescribed by their charters or articles of incorporation, and the books, and papers, pictures, works of art, apparatus, and other personal property belonging to such institutions shall be exempt. Kansas exempts all money and credits belonging exclusively to universities, colleges, and academies appropriated solely to sustain such institutions or associations not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such in-

178. op. cit.
179. Arkansas, Code of 1937, Ch. 158, Art. 3, Sec. 13603.
180. Ohio, Code of 1940, Sec. 5349.
181. op. cit.
182. op. cit.
183. op. cit.
184. op. cit.
185. op. cit.
stitutions or associations. West Virginia also exempts money of colleges, seminaries and academies if used exclusively for educational purposes.

Limitation on Income. Three states, Arizona, Connecticut and Maine will exempt educational institutions provided the income from the land or the taxes paid does not exceed a stipulated amount. In Arizona the income from lands held for educational purposes must not exceed $50,000. Connecticut provides that no corporation for educational purposes shall hold in the state real estate free from taxation if the annual income of said property is more than $6,000. Maine provides that any college in the state authorized under its charter to confer the degree of Bachelor of Arts or of Bachelor of Science and having real estate liable to taxation, shall, on the payment of such tax and proof of the same to the satisfaction of the Government and Council be reimbursed from the state treasury to the amount of the tax so paid; provided, however, that the aggregate amount so reimbursed to any college in any one year shall not exceed $1,500; and provided, further, that this claim for such reimbursement shall not apply to real estate bought by any such college after the twelfth day of April, 1889.

Income From Property Dedicated for Educational Purposes Exclusively Not Taxed. Two states, Alabama and New Hampshire carry the above provision. Alabama exempts from taxation all property, real and personal, by whomsoever owned and whether assessed or not, the net income.

185. op. cit.
187. op. cit. Sec. 1175.
188. op. cit.
189. op. cit.
190. op. cit.
191. op. cit.
192. Alabama, Code of 1928, Ch. 58, Art. 2, Sec. 3028.
193. op. cit.
rents and returns from which are irrevocably dedicated for use exclusively for educational purposes in the State of Alabama, other than for schools owned or controlled by any religious sect or denomination, during the entire time such income is so dedicated. New Hampshire provides that the personal property of institutions devoted to educational purposes incorporated or organized within this state and the real estate owned and occupied by them, their officers, or their students for the purposes for which they are established shall be exempt from taxation provided none of the income or profits of the business of such corporations or institutions is divided among the stockholders or members, or is used or appropriated for other than educational purposes.

Portion of Lot of Building Exempt. Two states, New York and Tennessee exempt the portion of any educational corporation or association if said portion is used exclusively for carrying out thereupon such purpose or purposes of said institution, but the remaining portion shall be subject to taxation.

Property, Real or Personal let for Rent or Hire or for Use for Business Purposes Shall Not be Exempt. Two states, Alabama and Florida have this provision. Alabama provides that property, real or personal, owned by any educational institution and let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property is used exclusively for educational purposes.

195. op. cit.
196. op. cit.
197. op. cit.
198. op. cit. Sec. 3022.
199. op. cit.
200. op. cit.
201. op. cit.
202. op. cit.
or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation nor shall any property held by them as an investment or for speculation be exempt from taxation.

**Status of Property Determines Exemption.** Two states, Delaware and Louisiana have this exemption. Delaware provides that all real and personal property not belonging to any college or school, and used for educational or school purposes, except as provided, shall be liable to taxation and assessment for public purposes. In Louisiana the Parish of Orleans, the status of real and personal property on August first of each year shall determine its liability or exemption from taxation for the following calendar year.

**Open to Public.** Georgia and Washington provide the following limitations in order to be exempt. Georgia exempts only such colleges, incorporated academies or other seminaries of learning as are open to the general public. Washington goes further and exempts any school or college in the state which is open to all persons upon equal terms.

**Laws Void.** Georgia and Minnesota hold all laws exempting property other than that property authorized by their respective state constitutions void. Georgia provides that all laws exempting property from

202. op. cit.
203. op. cit.
204. op. cit.
205. op. cit.
206. op. cit.
207. op. cit.
208. op. cit.
209. op. cit.
210. op. cit. Ch. 92-202
211. op. cit.
212. op. cit.
taxation, other than property enumerated in Article VII, Part 2 of the Constitution (in Chapter 2-50), shall be void. Minnesota\textsuperscript{213} emphatically denies the legislature the authority to exempt persons or property from taxation, directly or indirectly except as authorized by the Constitution.

\textsuperscript{213} op. cit.
SUMMARY

Alabama

1. Income from property dedicated for educational purposes exclusively not taxed.
2. Property of an educational institution let for rent or hire or for use for business purposes not exempt.

Arizona

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Exempts property used exclusively for educational purposes.
4. Land necessary for educational purposes may be exempt.
5. Property used for the establishment and endowment of institutions of learning exempt.
6. Exemption granted if the income from the land or the taxes paid does not exceed a stipulated amount.

Arkansas

1. Exemption not to extend to leasehold estates or real property.

California

1. Grants exemption if not conducted for profit.

Colorado

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.

3. Exempts property used exclusively for educational purposes.

Connecticut

1. Legacies not taxed.

2. Assessor to determine what part of property exempt; filing necessary.

3. Exemption granted if the income from the land or the taxes paid does not exceed a stipulated amount.

Delaware

1. Legacies not taxed.

2. Status of property determines exemption.

Florida

1. Land necessary for educational purposes may be exempt.

2. Property actually occupied by an educational institution is exempt.

3. Property of an educational institution let for rent or hire or for use as business establishment not exempt.

Georgia

1. Grants exemption if not conducted for profit.

2. Exempts property with some limitations.

3. Property used for the establishment and endowment of institutions of learning exempt.

4. Institutions of learning open to public are exempt.
5. All laws exempting property from taxation are void if the exemption is not authorized by state constitution.

Idaho

1. Grants exemption if not conducted for profit.

Illinois

1. Grants exemption if not conducted for profit.
2. Exempts property used exclusively for educational purposes.

Indiana

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Property used for the establishment and endowment of institutions of learning exempt.
4. Legacies not taxed.

Iowa

1. Exempts property with some limitations.
2. Property used for the establishment and endowment of institutions of learning exempt.
3. Money and credits belonging exclusively to institutions exempt.

Kansas

1. Exempts property with some limitations.
2. Money and credits belonging exclusively to institutions exempt.
Kentucky
1. Grants exemption if not conducted for profit.
2. Exempts property used exclusively for educational purposes.

Louisiana

Maine
1. Exempts property with some limitations.
2. Exemption granted if the income from the land or the taxes paid does not exceed a stipulated amount.

Maryland
1. Exempts property with some limitations.

Massachusetts
1. Grants exemption if not conducted for profit.
2. Land necessary for educational purposes may be exempt.

Minnesota
1. Academies, colleges and universities are exempt.
2. All laws exempting property from taxation are void, if the exemption is not authorized by the state constitution.

Mississippi
1. Exempts property with some limitations.
2. Exempts property used exclusively for educational purposes.
3. Academies, colleges and universities are exempt.
Missouri
1. Exempts property with some limitations.

Montana
1. Exempts property used exclusively for educational purposes.
2. Land necessary for educational purposes may be exempt.

Nebraska
1. Grants exemption if not conducted for profit.
2. Exempts property used exclusively for educational purposes.

Nevada
1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.

New Hampshire
1. Grants exemption if not conducted for profit.
2. Land necessary for educational purposes may be exempt.
3. Academies, colleges and universities are exempt.
4. Income from property dedicated for educational purposes exclusively not taxed.

New Jersey
1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Property actually occupied by an educational institution is exempt.
New York

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Exempts property used exclusively for educational purposes.
4. Portion of any educational corporation used for carrying out the purposes of said institution is exempt.

North Carolina

1. Grants exemption if not conducted for profit.
2. Legacies not taxed.

North Dakota

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Academies, colleges and universities are exempt.

Ohio

1. Exemption not to extend to leasehold estates or real property.

Oklahoma

1. Land necessary for educational purposes may be exempt.

Oregon

1. Property actually occupied by an educational institution is exempt.

Pennsylvania

1. Academies, colleges and universities are exempt.
Rhode Island

1. Exempts property with some limitations.

South Carolina

1. Exempts property with some limitations.
2. Exemption not to extend to leasehold estates or real property.

South Dakota

1. Exempts property used exclusively for educational purposes.
2. Property actually occupied by an educational institution is exempt.

Tennessee

1. Grants exemption if not conducted for profit.
2. Land necessary for educational purposes may be exempt.
3. Property actually occupied by an educational institution is exempt.
4. Portion of any educational corporation used for carrying out the purposes of said institution is exempt.

Texas

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Exempts property used exclusively for educational purposes.
4. Property used for the establishment and endowment of institutions of learning exempt.
5. Assessor to determine what part of property exempt; filing necessary.

6. Exemption not to extend to leasehold estates or real property.

Virginia

1. Land necessary for educational purposes may be exempt.

Washington

1. Exempts property with some limitations.

2. Exempts property used exclusively for educational purposes.

3. Land necessary for educational purposes may be exempt.

4. Property used for the establishment and endowment of institutions of learning exempt.

5. Assessor to determine what part of property exempt; filing necessary.

6. Institutions of learning open to the public are exempt.

West Virginia

1. Grants exemption if not conducted for profit.

2. Exempts property with some limitations.

3. Academies, colleges and universities are exempt.

4. Assessor to determine what part of property exempt; filing necessary.

5. Money and credits belonging exclusively to institutions exempt.
Wisconsin

1. Grants exemption if not conducted for profit.
2. Exempts property with some limitations.
3. Exempts property used exclusively for educational purposes.
4. Property used for the establishment and endowment of institutions of learning exempt.

Wyoming

1. Grants exemption if not conducted for profit.
2. Land necessary for educational purposes may be exempt.
CHAPTER IV

JUDICIAL DECISIONS

The last chapter was concerned with the statutory provisions of the forty-eight states. The statutes of most of the states granted exemption from taxation of non-public school property under certain conditions. Where there was no provision in a state statute for this exemption, the cause was a denial of this power to the state legislature by the state constitution, rather than the failure of the state legislature to recognize tax-exemption as a means of furthering education and lessening the burden of the tax-payers. The problem is considered now on the basis of court decisions. The purpose of this chapter is to determine how the judicial authority of a state interprets the attempts made by the legislators of a state to further the progress of education through tax-exemption of non-public school property.

Use, not ownership determines tax-exemption. Fourteen states,

1. Cathedral of St. John vs. County Treasurer, 29 Colorado 143.
2. Williams vs. Baidridge, 48 Idaho 618.
5. Washburn College vs. Shawnee, 8 Kansas 344.
7. Society vs. Hoherman, 135 Southwest 42.
8. College vs. Schoefer, 16 Southwest 395.
10. Berger vs. University of New Mexico, 28 New Mexico 666.
11. 21 L.R.A. (N.S.) 164.
13. Cincinnati College vs. State, 19 Ohio 110.
and Wisconsin, through their courts determined that use, not use and
ownership, is the test of the right of tax-exemption and exemption is lost
if the property is appropriated to other use. In the Colorado case the
court held that "all lots with the buildings thereon, if the buildings are
used exclusively for educational purposes, are exempt from taxation." 15

In the Illinois case of Presbyterian Theological Seminary vs. People the
court held that "land belonging to institutions of learning upon which
buildings or institutions are not located, and which is not used exclusively
for the interests of the corporation, is subject to taxation." 16 In the
Missouri case of Society vs. Hogerman the court held that "the charter of
a benevolent, charitable, or educational corporation, granted by the general
assembly in 1864, exempting its properties from tax so long as they are
used for charter purposes, valid under the constitution of 1865 is in the
nature of a contract and cannot be withdrawn by a subsequent legislature
or constitution." 17

12. State vs. Powen, 106 Southwest (2nd.) 861, 863.
15. op. cit. 29 Colorado 143.
16. op. cit. 101 Illinois 578.
17. op. cit. 135 Southwest 42.
In the case of Kenyon College vs. Schnebly it was held that "the exemption from taxation of property belonging to colleges and academies extends to all buildings and lands that are with reasonable certainty used in furthering or carrying out the necessary objects and purposes of the institution." It was also held in this case that "residences occupied by the president and professors and janitor of a college are exempt, as also is vacant land from which no revenue is derived."

Laws exempting property strictly construed. Eight states, Idaho, Indiana, Maryland, Michigan, Mississippi, Missouri, North Carolina, West Virginia, in their court decisions have held that alleged grants of exemption from taxation will be strictly construed and the exemption cannot be sustained unless it is within the spirit as well as the letter of the law. In the Idaho case of Williams vs. Baldridge the court held that the "power of the state to exempt from taxation is plenary save only as it may be limited by the federal or the state constitution." The court also said in this decision that "while exemptions are to be strictly construed, the statute must be clearly prohibited by the constitution before it can be declared in violation thereof." In the case of Appeal Tax Court vs. St. Peter's Academy the court decided that "the legislature may in special cases grant an exemption from taxation provided there

18. op. cit. 31 Northeast 1138.
19. Ibid.
   Williams vs. Baldridge, 48 Idaho 618.
   Warner vs. Curron, 75 Indiana 309.
22. Appeal Tax Court vs. Baltimore Academy, 50 Maryland, 437.
   Appeal Tax Court vs. St. Peter's Academy, 50 Maryland 339.
be a consideration of some kind. If there is no consideration, the exemp-
tion is a mere gratuity revocable at will."30 In the Michigan case the
court held that although laws exempting property from taxation must be con-
strued strictly, it should not be done "to the point of defeating the legis-
latures intention."31 In Adams County vs. Catholic Diocese of Natchez the
court held "while as a general rule exemptions from taxation must be
strictly construed, the legislature has the authority to relax such rule
with reference to educational and religious institutions."32 In the West
Virginia case of the State vs. Kittle the court held that "the provisions
in the constitution and in the statutes exempting property from taxation
are always strictly construed. This is because all exemptions evade the
operation of the general principle that tax laws should be equal and uni-
form so as to place the public burdens as nearly as may be possible upon all
property and citizens alike."33

Tax-exemption a benefit to state. Six states, Colorado,34
Kansas,35 Maryland,36 Ohio,37 Tennessee,38 and West Virginia39 through their
court decisions hold that the exempting of non-public educational institu-
27. State vs. Kittle, 105 Southeast 775.
28. op. cit. 48 Idaho 618.
29. Ibid.
30. op. cit. 50 Maryland 339.
31. op. cit. 209 Michigan 523.
32. op. cit. 110 Miss. 890.
33. op. cit. 105 Southeast 775
34. Horting vs. Fountain Valley School, 98 Colorado 480.
36. Appeal Tax Court vs. St. Peter's Academy, 50 Maryland 339.
38. State vs. Powan, 106 Southwest (2nd) 861, 863.
tions from taxation is a benefit to the state on the ground that if they were not in existence, their work would have to be carried on at the expense of the taxpayers. In the Maryland case of Appeal Tax Court vs. Baltimore Academy the court held that "certain species or classes of property may be exempt from taxation within reasonable limits, when public interests so require. There must, however, be no arbitrary discrimination between property of the same kind." 40

Income used for school purposes exempt. Six states, Colorado, Kentucky, Missouri, Ohio, Pennsylvania, Virginia, in their judicial decisions upheld tax-exemption of educational property where the income from said property was used for the particular educational institutions. In the Kentucky case the court held that where "the whole income from a certain building was used for school purposes" the building was exempt from taxation, regardless of the fact that a tuition was charged in the school to those who could afford to pay. 47 In the case of Society vs. Hudson the court held that "a school building which is exempt, will not be rendered taxable by renting a room therein for other purposes, where the proceeds are used exclusively for the benefit of the school." 48 In the Pennsylvania case of Bryn Mawr College vs. County and Township the court held that a "college is a purely public charity although its support and

40. op. cit. 50 Maryland 437.
41. op. cit. 98 Colorado 480.
42. Good Shepherd vs. Commission, 202 Southwest 894.
43. Society vs. Hudson, 12 Atlantic 342.
44. Little vs. Theological Seminary, 74 Northeast 193.
45. Bryn Mawr College vs. County and Township, 34 Pennsylvania 114.
46. Staunton vs. Mary Baldwin Seminary, 99 Virginia 653.
47. op. cit. 202 Southwest 894.
48. op. cit. 12 Atlantic 342.
Maintenance are, in part, derived from tuition paid by students. In Staumton vs. Mary Baldwin Seminary the court held that "real estate owned by an educational institution is exempt from taxation where the proceeds are devoted exclusively to educational purposes, and if not exclusively so used, then to the extent that the same are so used." 50

Residence of individual on educational premises does not defeat exemption. Six states, Colorado, Michigan, New York, North Dakota, Ohio, Pennsylvania, as a result of their judicial interpretations have held that the housing of its teaching staff or other persons, all of whom were connected with the institution in some capacity of service necessary and incidental to the school work therein, did not defeat the right of exemption claimed. In Boyle vs. Westmoreland County the court held that a "convent building and a garage used in connection with the school are exempt." 57

No statutory limits on grounds. Four states, Colorado, Ohio, Michigan, Mississippi, have put no specific limit on the amount of real estate belonging to incorporated educational institutions entitled to exemption from taxation, provided the same is solely occupied and appropriately

49. op. cit. 34 Pennsylvania 114.
50. op. cit. 99 Virginia 653.
51. op. cit. 98 Colorado 480.
52. op. cit. 209 Michigan 523.
54. 21 L. R. A. (N.S.) 171.
55. op. cit. 91 Northeast 1138.
56. op. cit. 16 West 1.
57. op. cit. 16 West 1.
58. op. cit. 98 Colorado 480.
59. op. cit. 91 Northeast 1138.
60. op. cit. 209 Michigan 523.
used for the purposes for which such institutions were incorporated. In a Michigan case the court held that "there is nothing authorizing the assessors to find or put a specific limit on the amount of real estate belonging to incorporated educational and scientific institutions entitled to exemption from taxation, provided the same is in fact and good faith solely occupied and appropriately used for the purposes for which such institutions were incorporated."62 In Chandler vs. Carman Education the court held that a "religious society's land used in connection with a college is not taxable merely because plotted and subdivided into lots for future sale."63

**Substantial Doubts Concerning Exemption from Taxation are to be Resolved in Favor of the Public.** Four states, Idaho, Oregon, Mississippi, and West Virginia, hold that when a claim of exemption from taxation is made, persons claiming it must be able to point out some provision of law plainly granting the exemption, where there is a doubt in a statute which attempts to allow an exemption the uncertainty will be resolved in favor of the state and against the exemption.

**Exemption in Derogation of Equal Rights not Favored.** Four states, Maryland, Michigan, Missouri, and West Virginia have held that there must be no arbitrary discrimination between property of the same kind, as

63. op. cit. 165 Mississippi 690.
64. Cheney vs. Minidoka County, 26 Idaho 471.
65. Wallace vs. Board of Equalization, 85 Pacific 365.
67. op. cit. 105 Southeast 775.
68. op. cit. 50 Maryland 437.
69. op. cit. 209 Michigan 523.
70. State vs. Johnston, 113 Southwest 1083.
71. op. cit. 105 Southeast 775.
laws exempting property from taxation are in derogation of equal rights, they must be construed strictly. However, not to the point of defeating the legislature's intention.

Use Does not Determine Exemption. Two states, Alabama, and Missouri through their courts have held that property leased for school purposes is not exempt. In the Alabama case of Gay vs. State the court held that "the fact that rent from property is applied to a religious purpose does not exempt the property." In the State vs. Macgurn the court decided that "a lot leased for school purposes is not exempt.”

Tuition Charge Does not Defeat Exemption. Two states, Colorado, and Kentucky have held that exemption from taxation is not altered by the fact that some money is received as part tuition.

No Constitutional Restriction on the Power of the Legislature. Two states, Michigan, and West Virginia hold that there is no constitutional restriction on the power of the legislature to exempt land from taxation. The legislature can exercise the power of exemption as it chooses. In Frichard vs. County Court the court held that the "state constitution does not itself exempt any property from taxation; it merely gives the legislature authorization to do so."
Legislature May Extend Exemption to Property Enumerated in Constitution. Two states, Montana and Oregon hold that as the provisions of the constitution are declared to be mandatory and prohibitory, the enumerations are exclusive of any other and no class of property not falling within the exceptions specified in the constitution can be exempt by legislators from taxation.

Constitutional Exemption Cannot be Curtained by the Legislature. Two states, Kansas and Nevada hold that the right of taxation, inherent in every form of government is vested in the legislature and is unlimited in that body except as restrained by constitutional provisions.

Property Used Exclusively for the Education of Youth. Four states, Colorado, Michigan, Mississippi, Missouri through their judicial decisions hold that the property of an incorporated educational institution for the education of youth exclusively is exempt from taxation.

Not Conducted for Profit. Two states, Colorado and Kentucky hold that only those premises of private schools not conducted for profit are exempt from taxation. In the Kentucky case the court held "that in institutions of learning where an education is furnished free or at a normal price the property is exempt."

81. Daly Bank vs. Board of Commissioners, 81 Pacific 950.
82. Cruse vs. Fischi, 175 Pacific 378.
83. Crawford vs. Linn County, 5 Pacific 733.
84. op. cit. 235 Pacific 869.
85. op. cit. 116 Pacific 892.
86. State vs. Central Pacific Railroad Company, 30 Pacific 689.
88. Detroit Home and Day School vs. Detroit, 76 Michigan 521.
89. Harrison County vs. Gulf Coast Military Academy, 126 Miss. 729.
90. op. cit. 98 Colorado 480.
91. op. cit. 98 Colorado 480.
92. City of Louisville vs. Board of Trustees, 26 Southwest 994.
93. op. cit. 1332.
Legislature has Power to Exempt Property. In California the courts have held that in the absence of constitutional prohibition, the legislature has power to exempt property from taxation, including special assessments as well as general taxes.

Exemption of an Institution of a Collegiate Grade Only. The courts of California hold that the exemption from taxation of the property used for education by an institution of collegiate grade does not exempt an institution which is not of collegiate grade as a whole but which is made up of both collegiate grades and grades lower than collegiate grades.

Property of Corporation Used for Physical Culture. The court decisions of Colorado hold that the property of corporations used for physical culture is exempt from taxation.

Structure, a Building, although Incomplete. In Colorado the courts have held that a structure is a building, although incomplete, and, therefore, eligible for exemption from taxation.

Legislature May limit the Constitution. It has been held in Colorado that it is absolutely within the power of the legislature to limit, modify or abolish the exemptions provided by the constitution.

Liberal Interpretation. The courts of Colorado in cases involving tax-exemption of non-public school property are liberal in their decisions.

92. Pasadena University vs. Los Angeles College, 214 Pacific 868.
93. Ibid.
94. op. cit. 88 Colorado 480.
95. Ibid.
96. op. cit. 88 Colorado 480.
97. Ibid.
State Legislature Limited. In Idaho the power of the state to exempt from taxation is plenary, save only as it may be limited by federal or state constitution.

Partial Exemption. In Indiana the courts hold where there is room for reasonable doubt as to total or partial exemption from taxes, the latter alone should be recognized. This is not true of Michigan, that state holds that property owned and occupied by an educational institution is exempt from taxation as an entirety and not only partially.

Legislature Licensed Specially. The legislature of Maryland may in special cases grant an exemption from taxation provided there be a consideration of some kind.

Not Exempt from Special Tax. The Illinois courts hold that property may be exempt from general tax and yet not exempt from special taxation for local improvement.

Exemption by Charter. In Missouri the court held that the charter of a benevolent, charitable or educational corporation, granted by the general assembly in 1864, exempting its properties from tax, so long as they are used for charter purposes, valid under the constitution of 1865, is in the nature of a contract and cannot be withdrawn by a subsequent legislature or constitution.

98. Williams vs. Baldridge, 48 Idaho 618.
100. op. cit. 209 Michigan 525.
101. Appeal Tax Court vs. St. Peter's Academy, 60 Maryland 339.
103. Society vs. Hegerman, 135 Southwest 42.
     Sloan vs. Railway, 61 Missouri 24.
SUMMARY

Alabama

1. Use does not determine exemption.

Colorado

1. Use, not ownership, determines tax-exemption.
2. Tax-exemption a benefit to state.
3. Income used for school purposes exempt.
4. Residence of individual on educational premises does not defeat exemption.
5. No statutory limits on grounds.
6. Tuition charge does not defeat exemption.
7. Property used exclusively for the education of youth.
8. Not conducted for profit.
9. Property of a corporation used for physical culture.
10. Structure, a building, although incomplete.
11. Legislature may limit the constitution.
12. Liberal interpretation.

California

1. Legislature has power to exempt property.
2. Exemption of an institution of a collegiate grade only.

Idaho

1. Use, now ownership, determines tax-exemption.
2. Laws exempting property strictly construed.
3. Tax-exemption a benefit to the state.
4. Substantial doubts concerning exemption from taxation are to be resolved in favor of the public.

5. State legislature limited.

Illinois

1. Use, not ownership, determines tax-exemption.

2. Not exempt from special tax.

Indiana

1. Laws exempting property strictly construed.

2. Partial exemption.

Kansas

1. Use, not ownership, determines tax-exemption.

2. Tax-exemption a benefit to the state.

3. Constitutional exemption cannot be curtailed by the legislature.

Kentucky

1. Income used for school purposes exempt.

2. Tuition charge does not defeat exemption.

3. Not conducted for profit.

Maryland

1. Laws exempting property strictly construed.

2. Tax-exemption a benefit to the state.

3. Exemption in derogation of equal rights not favored.

4. Legislature licensed especially.

Michigan

1. Use, not ownership, determines tax-exemption.
2. Laws exempting property strictly construed.
3. Residence of individual on educational premises does not defeat exemption.
4. No statutory limits on grounds.
5. Exemption in derogation of equal rights not favored.
6. No constitutional restriction on the power of the legislature.
7. Property used exclusively for the education of youth.

Mississippi

1. Laws exempting property strictly construed.
2. No statutory limits on grounds.
3. Substantial doubts concerning exemption from taxation are to be resolved in favor of the public.
4. Property used exclusively for the education of youth.

Missouri

1. Use, not ownership, determines tax-exemption.
2. Laws exempting property strictly construed.
3. Income used for school purposes exempt.
4. Exemption in derogation of equal rights not favored.
5. Use does not determine exemption.
6. Property used exclusively for the education of youth.
7. Exemption by charter.

Montana

1. Legislature may extend exemption to property enumerated in constitution.
Nebraska

1. Use, not ownership, determines tax-exemption.

Nevada

1. Constitutional exemption cannot be curtailed by the legislature.

New Mexico

1. Use, not ownership, determines tax-exemption.

New York

1. Residence of individual on educational premises does not defeat exemption.

North Carolina

1. Laws exempting property strictly construed.

North Dakota

1. Use, not ownership, determines tax-exemption.

2. Residence of individual on educational premises does not defeat exemption.

Ohio

1. Use, not ownership, determines tax-exemption.

2. Income used for school purposes exempt.

3. Residence of individual on educational premises does not defeat exemption.

4. No statutory limits on grounds.

Oregon

1. Use, not ownership, determines tax-exemption.

2. Substantial doubts concerning exemption from taxation
are to be resolved in favor of the public.

3. Legislature may extend exemption to property enumerated in constitution.

Pennsylvania

1. Income used for school purposes exempt.
2. Residence of individual on educational premises does not defeat exemption.

Tennessee

1. Use, not ownership, determines tax-exemption.
2. Tax-exemption a benefit to the state.

Virginia

1. Income used for school purposes exempt.

West Virginia

1. Use, not ownership, determines tax-exemption.
2. Laws exempting property strictly construed.
3. Tax-exemption a benefit to the state.
4. Substantial doubts concerning exemption from taxation are to be resolved in favor of the public.
5. Exemption in derogation of equal rights not favored.
6. No constitutional restriction on the power of the legislature.

Wisconsin

1. Use, not ownership, determines tax-exemption.
CHAPTER V

SUMMARY AND CONCLUSIONS

General review of the study. Chapter I of this study is concerned with a statement of the problem, tax-exemption of non-public school property, and the purpose of the investigation, which is to analyze the constitutional provisions, statutory provisions, and judicial decisions in relation to the problem. The importance of the study was considered on the basis that private and parochial schools do a work that the state would be called upon to do, at least in part, if these non-state institutions were not at work. The procedure was the examination of state constitutions, state statutes and court opinions. Available materials relative to the study were considered to determine if a similar investigation had been completed and reported.

Chapter II is concerned with constitutional provisions for tax-exemption classified as permissive and mandatory. For example, in several states there was a general exemption of all property used for educational property; in several states exemption was granted if the schools were not conducted for profit.

Chapter III analyzes the statutory provisions with their limitations, such as the kind and amount of property exempt, whether the property is used exclusively for educational purposes or whether the income from the property is used exclusively for educational purposes.

In Chapter IV are cited the court decisions which interpret the constitutional and statutory provisions. The decision of a court in one
state may allow all the property of an educational institution to be exempt from taxation, while the decision of a court in another state may permit only the exemption of that portion of the property which is used for educational purposes.

FINDINGS

1. The constitutions of twenty-five states grant exemption by general law in their respective constitutions. Twenty-three of these states are permissive in their provisions for exemption. The remaining two are mandatory.

2. The constitutions of seventeen states provide that all property of educational associations or institutions may be exempt by law.

3. The constitutions of nine states may allow exemption if the schools are not conducted for profit.

4. The constitutions of seven states provide for the exemption of certain types and stipulated amounts of property when said property is used exclusively for educational purposes.

5. The constitution of one state provides that all buildings erected for and used as a college, incorporated academy, or other seminary of learning may be exempt by law.

6. The statutes of twenty-one states grant exemption of property if the educational institution is not conducted for profit.

7. The statutes of twenty states exempt certain kinds, and stipulated amounts of property.

8. The statutes of twelve states permit the exemption of property
used exclusively for education.

9. The statutes of ten states exempt the real property of an educational institution needed to carry out its purpose.

10. The statutes of seven states exempt property used for the establishment and endowment of institutions of learning.

11. The statutes of six states exempt academies, colleges and universities.

12. The statutes of five states exempt property actually occupied by an educational institution.

13. The statutes of four states do not tax legacies for educational purposes.

14. The statutes of four states permit exemption of educational property, but the Board of Assessors must inspect the statements filed with it and determine what part, if any, of the property shall in fact be exempt.

15. The statutes of four states do not grant exemption to leasehold estates or real property held under the authority of a college or university of learning in their respective states.

16. The statutes of three states exempt money and credits belonging exclusively to institutions of learning.

17. The statutes of three states will exempt educational institutions provided the income from the land or the taxes paid does not exceed a stipulated amount.

18. The statutes of two states exempt the income from property dedicated for educational purposes exclusively.

19. The statutes of two states exempt the portion of any educational
corporation or association if said portion is used exclusively for carrying out thereupon such purpose or purposes of said institution, but the remaining portion shall be subject to taxation.

20. The statutes of two states will not exempt real or personal property of an educational institution let for rent or hire or for use for business purposes.

21. The statutes of two states carry the provision that the status of property determines its exemption.

22. The statutes of two states exempt institutions of learning if they are open to the public.

23. The statutes of two states provide that all laws exempting property other than that property authorized by their respective state constitutions are void.

CONCLUSION

1. Almost every state has made some provision in its constitution, or in its statutes, for tax-exemption of non-public school property.

2. Several of the states in their constitutions were liberal in permitting exemptions, others were specific.

3. Several of the state constitutions gave the legislature the power to exempt property from taxation, others demanded that the legislature exempt property.

4. Several of the constitutions permitted only the exemption of the specific property mentioned in the constitutions.

5. The statutes of all the states that granted exemptions did so
with some limitations.

6. Little uniformity was found in the qualifications necessary for tax-exemption.

7. The court decisions, in most instances, were liberal in interpreting the provisions of the constitutions and the statutes.

8. The amount of tax-exemption granted to private and sectarian schools was not adequate compensation for the responsibilities these schools assumed and for the financial burden they removed from the states.

RECOMMENDATIONS

1. All the states in their constitutions should grant their legislatures the power to exempt non-public school property from taxation.

2. The state legislatures should exempt all property both real and personal which is used specifically to further education.

3. In order to arrive at some uniformity in reference to tax-exempt property, a restatement of the laws pertaining to tax-exemption of non-public school property (similar to the restatement compiled by the American Bar Association in reference to the Law of Contracts 1 and to the Law of Torts 2 ) could be compiled by the National Education Association or some similar organization.


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The thesis, "Tax-Exemption of Non-Public School Property", written by Cornelia A. Johnson, has been accepted by the Graduate School with reference to form, and by the readers whose names appear below, with reference to content. It is, therefore, accepted in partial fulfillment of the requirements for the degree of Master of Arts.

Dr. Scanlan

Dr. Laughlin

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