

Lands donated by Edward Wisner to City of New Orleans not taxable
under terms of act of donation and compromise agreement.

October 10, 1949.

Mr. Floyd A. Wallis,
Assistant City Attorney,
City Hall,
New Orleans, Louisiana.

You have asked this department for an opinion concerning the question of whether or not the lands donated by Edward Wisner to the City of New Orleans are subject to ad valorem taxation.

Attached to your letter is a copy of a ruling made by the Louisiana Tax Commission on this question as of July 5, 1932. It appears from the factual statement incorporated in said ruling that the late Edward Wisner donated certain large tracts of land situated in the Parishes of Lafourche, Jefferson and St. John to the City of New Orleans, et al. Edward Wisner died in 1924, and the act of donation aforesaid was executed by Wisner of August 4, 1914. The act of donation which was made to the City of New Orleans, as trustee, named the Mayor of New Orleans or his successor in office the representative to administer the trust therein created. The trust thus created was to exist for one hundred years. After the expiration of this period, the City of New Orleans was authorized to dispose of all of said lands, but required to use the income from the sale thereof for the purposes set out in the act of donation.

Wisner donated these lands to the City of New Orleans for the benefit and use, either through the revenue or ultimate sale of said lands, of the Charity Hospital, Salvation Army, and other civic and charitable agencies. None of the heirs of Edward Wisner were mentioned in the act of donation as beneficiaries.

**APRIL 1, 1948 TO APRIL 1, 1950 BOLIVAR E. KEMP, JR., ATTORNEY NOPL CITY
ARCHIVES COLLECTION LA DOC J1.8:948-950**

Page 1 of 4.

It further appears from the ruling made by the Louisiana Tax Commission in 1932 that after the death of Mr. Wisner, his widow and heirs instituted suit to have determined their interest in the Wisner lands. Before trial was reached, the widow and heirs ratified, confirmed and approved said act of donation and entered into an agreement of compromise with the donees. Such agreement of compromise was then made the judgment of the Civil District Court for the Parish of Orleans, Division B, No. 178,463, in the suit entitled *Mrs. Mary J. Wisner, et al v. City of New Orleans, et al*. Under the terms of the agreement and judgment, the widow and heirs of Edward Wisner released their claim to the property, conditioned upon the trustee paying them forty percent of the revenues of said property.

It further appears from copy of the ruling aforesaid that the Assessor of Lafourche Parish placed the Wisner lands on the assessment rolls of said parish for the year 1931, and assessed same in the names of the parties who were recognized as owners thereof in the agreement and judgment of compromise, for their respective interests.

When this assessment was made, the Louisiana Tax Commission was called upon to make a ruling, and on July 5, 1932, a ruling was made that such property was not subject to ad valorem taxation.

It now appears from your letter of August 22, 1949, that, since the date of the ruling by the Louisiana Tax Commission, no further effort had been made to place these lands on the assessment rolls of Lafourche Parish until 1946 when the then Assessor, Mr. V. J. Robichaux, notified the City of New Orleans that he had placed the lands on his rolls and was going to attempt to collect taxes thereon. Thereupon the City of New Orleans filed a suit against the Assessor and applied for alternative writs of mandamus to cancel the assessment. The writs were issued and then by agreement with the District Attorney of the Parish of Lafourche, the case was continued indefinitely pending the outcome of the litigation involving the attempted assessment of the Moisant International Airport, owned by the City of New Orleans and located in Jefferson Parish. Your letter does not disclose what disposition was made of this litigation, but your letter does state that recently the City of New Orleans has been notified by the Assessor of Lafourche Parish that he intends to go forward with his attempted assessment of such lands in Lafourche Parish.

Our answer to your inquiry and the opinion that we now give you in the premises are found in the exact language appearing in the ruling made by the Louisiana Tax

**APRIL 1, 1948 TO APRIL 1, 1950 BOLIVAR E. KEMP, JR., ATTORNEY NOPL CITY
ARCHIVES COLLECTION LA DOC J1.8:948-950**

Page 2 of 4.

Discussion

Commission under date of July 5, 1932. We quote that language below and adopt it as our opinion:

"... The Assessor has now abandoned his former contention that all of the lands should be assessed, agreeing that the interest allegedly owned by the City of New Orleans and other political subdivisions should be exempt, because of that provision in the Constitution exempting public property from taxation. He does maintain, however, that the interest of the Salvation Army and of the Wisner Heirs is not exempt. The Tax Commission agrees with his contention that the Salvation Army cannot be exempted under the facts as contended for by him. Paragraph 2 of Section 4 of Article 10 of the Constitution exempts property dedicated to charitable institutions and lodges and clubs organized for fraternal purposes, provided the exemptions shall extend only to property and grounds thereunto appurtenant used for the above purposes and *not leased for profit or income.*

"The property under discussion is leased for profit and it is because of this fact that the assessor contends the interest of the Salvation Army should be placed on the assessment rolls.

"The Commission would be inclined to the opinion that the interest of the last named parties in the property should be assessed even if we adopted the view that their respective interests were merely held in trust. However, the Commission is of the opinion that neither the Salvation Army nor the Widow and Heirs of Wisner have a taxable interest in said property. The title to all of the property, under the Agreement of compromise is vested in the City of New Orleans. The City of New Orleans is obligated only to pay to the parties to the compromise agreement a certain proportion of the revenues derived from the property. As the Commission sees it, the Wisner Heirs and the Salvation Army agreed in effect that in consideration of the Trustee paying them a certain percentage of the revenues they would surrender any right whatsoever held by them in the property.

"In view of the fact that the Widow and Heirs of Wisner voluntarily surrendered whatever color of title they may have had in this property to these public and quasi-public agencies, the Parish of Lafourche is without interest in the matter.

**APRIL 1, 1948 TO APRIL 1, 1950 BOLIVAR E. KEMP, JR., ATTORNEY NOPL CITY
ARCHIVES COLLECTION LA DOC J1.8:948-950**

Page 3 of 4.

720

Taxation

"... The Commission further declares the Wisner lands as described in the judgment referred to above exempt from future assessment, as long as same are held by the City of New Orleans under the terms and conditions of said judgment."

Having subscribed fully to the ruling made by the Louisiana Tax Commission, and for the reasons set forth in its ruling, we advise you that, in our opinion, the lands aforesaid are not subject to ad valorem taxation in Lafourche Parish, Louisiana.

JOHN L. MADDEN.

**APRIL 1, 1948 TO APRIL 1, 1950 BOLIVAR E. KEMP, JR., ATTORNEY NOPL CITY
ARCHIVES COLLECTION LA DOC J1.8:948-950**

Page 4 of 4.