SOUTHWESTERN COLLEGES, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 295

THE CITY ASSESSOR OF THE CITY OF CEBU AND THE BOARD OF TAX ASSESSMENT APPEALS OF THE CITY OF CEBU,
Respondents.

July 27, 1958

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DECISION

This is an appeal from a decision of respondent Board of Assessment Appeals of Cebu City declaring itself without authority to declare certain properties of petitioner exempt from the payment of realty taxes and to order the City Assessor of Cebu to cancel the tax assessment thereon.

Petitioner is a corporation duly organized in 1946 under Philippine laws as an educational institution with offices at Cebu City. Sometime in the early part of 1946, petitioner requested respondent City Assessor of Cebu that the following real properties be exempt from realty taxes:

Tax Decl. No.	Lot No.	Assessed Value
28508	B Road Block	₱ 2,820.00
30950	486-A Banilad Estate	124,420.00
38455	2 Block 6	1,530.00
39509	4 Block 6	4,320.00
39510	3 Block 6	2,820.00
39511	5 Block 6	3,680.00
39512	1 Block 6	2,670.00
39513	485 Block 5	
	(Lot 4)-495-sub, sub-Lot 490B) (Lot 5)-488-1388, Block 5)	4,790.00

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Petitioner requested that the tax declarations of the above properties be transferred in its (Southwestern Colleges, Inc.) name. These properties were then, and still are registered in the names of the spouses Matias H. Aznar and Anunciacion Barcenilla. This request was denied by the City Assessor of Cebu on February 10, 1956. Whereupon, petitioner on February 25, 1956 appealed to the Board of Assessment Appeals of Cebu City. On May 31, 1956, the aforesaid Board rendered a decision declaring that it was:

> "without any authority to order the appellee, City Assessor of Cebu to cancel the tax declarations above-mentioned and have new ones issued in favor of the appellant and also, this Board is without authority to declare the said properties exempt from the payment of taxes since the year 1946."

Consequently, petitioner filed the instant appeal with this Court, praying that the properties in question be declared exempt from realty taxes from the time they were exclusively used for educational purposes in 1946, and that the City Assessor of Cebu be ordered to include said properties in the list of properties exempt from realty taxes. After filing its answer to the petition, but before the case was heard, respondents filed a motion to dismiss the petition on April 22, 1957 for lack of jurisdiction over the subject matter of the petition. The Court however denied the aforesaid motion to dismiss on April 23, 1957 and set the case for hearing on the merits.

At the trial, petitioner adduced evidence to support its claim that the properties herein involved should be exempt from the payment of realty taxes. During the hearing, the Judge presiding over the case, conducted an ocular inspection of the buildings and premises of the lands in question in the presence of both counsels.

From the mass of evidence introduced the following facts have been established:

The properties in question (lots) covered by the above-mentioned Tax Declarations are adjacent to each other and form one contiguous property and referred to as the Banilad Estate. The Certificates of Title to the said lots were and still are in the names of the spouses, Matias H. Aznar and Anunciacion B. Barcenilla. These lands are within the school campus of petitioner. On these lands and school site there have been erected several buildings, all listed in the name of petitioner, to wit:

Tax Declaration Number	Kind of Building
4071	Seven (7) Green Houses
61240	House (residence) of Aznars
61243	Coop Building
61244	Warehouse No. 1
61245	Warehouse No. 2
61247	Accounting Building

The aforesaid seven (7) green houses covered by Tax Declaration No. 4071 are being used as residence of the professors, instructors and other employees of the Southwestern Colleges who do not have any house of their own. The building covered by Tax Declaration No. 61240 is used as residence by the chairman of petitioner's Board of Trustees, Mr. Matias H. Aznar. The ground floor of the Coop Building embraced in Tax Declaration No. 61243 is used as a mess hall of the students, with a certain portion occupied by the School Hospital Bakery, while the upper floor thereof is used as classrooms. This bakery is a small bakery producing just enough to supply the needs of the hospital patients and student nurses. The Warehouses (Nos. 1 & 2) under Tax Declarations Nos. 61244 and 61245 are not used only for the storage of goods, materials, equipment or supplies devoted for educational purposes, but was likewise used for storing goods and other surplus materials needed and used by Matias H. Aznar in his other varied enterprises. The Accounting Building covered by Tax Declaration No. 61247 houses not only the accounting office of petitioner but also that of the various enterprises of Matias H. Aznar.

Of the buildings referred to above, only the Coop Building (Tax Decl. No. 61243) and the Accounting Building (Tax Decl. No. 61247) were given partial exemption from realty taxes, but only to the extent equivalent to the portion exclusively used for educational purposes.

In a deed of conveyance executed and acknowledged before a Notary Public on September 25, 1952, the spouses, Matias H. Aznar and Anunciacion Barcenilla transferred to petitioner the afore-mentioned lands and the buildings standing thereon in consideration of petitioner's shares of stock worth ₱150,000.00 issued to the former and their children (Exhibit "B", pp. 84-86, BIR rec.). This transfer has apparently not been registered as the certificates of title remained in the names of said spouses. On January

23, 1953, Mr. and Mrs. Aznar mortgaged these lands in favor of the Philippine National Bank for the sum of ₱350,000.00 for a commercial purpose (Exhibit "45"). However, according to the mortgagors, the lands were mortgaged actually "to help financing Southwestern Colleges" of petitioner herein.

Under the foregoing set of facts, the only issue is whether or not the real properties in question (land and buildings) are exempt from realty taxes.

Respondent contends that the properties in question are not exempted from realty taxes on the theory that the real owners thereof are the spouses Matias H. Aznar and Anunciacion Barcenilla who merely leased the same to petitioner. Moreover, respondent argues that not all the properties are used for educational purposes. Petitioner, on the other hand, maintains that the real properties herein involved are exempt from realty taxes. Quoted hereunder are the constitutional and statutory provisions relied upon by petitioner:

> "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, improvements used exclusively for religious, charitable or educational purposes shall be exempt from taxation." (Art. VI, Sec. 22, Par. 3, Constitution of the Philippines.)

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> "Sec. 3. Property exempt from tax.- The exemption shall be as follows:
> (a) x x x
> (b) x x x
> (c) Churches and parsonages or convents appurtenant thereto, and all lands, buildings and improvements used exclusively for religious, charitable, scientific or educational purposes." (Art. I, Sec. 3, Par. (c) of the Assessment Law, Commonwealth Act 470.)

"Sec. 51. <u>Property exempt from realty tax</u>.- (a) Lands and buildings owned by the United States of America, the Government of the Philippine Islands, or the City of Cebu, and burying grounds, churches and their adjacent parsonages, and conventos and lands or buildings used exclusively for religious, charitable, scientific, or <u>educational</u> purposes, and not for profit; but such exemption shall not extend to lands and buildings held for investments, though the income therefrom be devoted to religious, charitable, scientific or educational purposes." (Commonwealth Act No. 58, Sec. 51, Charter of Cebu City.)

From the aforecited constitutional provision, the exemption from taxes extends to "all lands, buildings, or improvements used exclusively for x x x educational purposes x x x x." On the other hand, Section 51 of Commonwealth Act No. 58 cited above provides that the exemption contemplates "lands or buildings used exclusively for x x x educational purposes, and not for profit x x x." By a comparison of these two provisions, we note that the statutory provision imposes an additional condition that lands or buildings be not used for profit in order to be entitled to exemption from taxation which condition does not appear in the constitutional rule. We believe that this additional condition imposed by Section 51 of Commonwealth Act No. 58 is not within the contemplation of the constitutional provision and cannot over-ride the requirement found in the fundamental law. It is argued by respondent however, that:

"if the user and the owner do not concur in one person or entity, it is necessary to determine whether the owner in letting the user make use of his property lets his property gratis or for a consideration. In case

> the owner derives benefit or compensation from the user, who by nature of his business or activity, is exempt under the Constitution or the statute, the exemption extended to the user does inure to the owner's benefit." (p. 9, Resp.'s Memo.)

The Constitution is quite clear and precise that "all lands, buildings, and improvements used exclusively for religious, charitable, scientific or educational purposes shall be exempt from taxation". From the context of the provision, we note that the sole determinative factor for exemption from realty taxes is the "use" to which the property is devoted.

> "If the Constitution . . . provides that property 'used' for certain purposes shall be exempted, it is the use and not the ownership which determines the right to the exemption, and the owner of the property may claim the exemption, although the use is by another." (61 C.J. 401 citing: Anniston City Land Co. vs. State, 48 So. 659, 160 Ala. 253; Scott vs. Society of Russian Israelites, 81 N.W. 624, 59 Neb. 571.)

This view appears to have been adopted by our Supreme Court in the cases of Apostolic Prefect of Mountain Province vs. City Treasurer of Baguio (71 Phil. 547) and Bishop of Nueva Segovia vs. Provincial Board of Ilocos Norte, (51 Phil. 352). And where "use" is the test, the ownership is immaterial. The fact that the property is not owned by the educational institution does not remove it from the influence of the exemption as long as the property is used exclusively for educational purposes.

> "Under a constitutional provision for exemption of real property used exclusively for schools, and statutory provisions for exemption of real and personal property owned and used by

> the person to whom assessed exclusively for schools, use for schools is sufficient to exempt real property irrespective of ownership, since use, not ownership is the determining factor. Accordingly the exemption has been allowed as to land used exclusively for school purposes even though it is leased at a profitable rent to the school district by the owner." (84 C.J.S. p. 575.)
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> "If the exemption depends on the use made of the property, rather than the ownership, the title to the property is immaterial, i.e., the title need not be in the user claiming exemption. In such case, it is the use, and not the ownership which determines the right to the exemption. It follows that the owner may claim the exemption although the use is by another." (II Cooley, The Law of Taxation, 1924 ed., p. 1425.)

And "'exclusively' used, according to the better considered decisions, means the primary and inherent use and does not preclude such incidental uses as are directly connected with, essential, and in furtherance of, the primary use." (Cooley, The Law of Taxation (4th Ed.) Vol. 2, Sec. 685, p. 1433; see also Bishop of Nueva Segovia vs. Provincial Board of Ilocos Norte, supra.)

As regards the Assessment Law we find the provisions of the same not applicable to the City of Cebu (Section 2, Commonwealth Act No. 470).

In the light of the foregoing observations, we shall now determine whether the lands at bar are entitled to the enjoyment from realty taxes.

With respect to the seven green houses covered by Tax Declaration No. 4071, we believe the same should be declared exempt from realty taxes. They have bean and are being used by the school as residences for the professors, instructors and other employees of the Southwestern Colleges who do not have a house of their own. That the dwellers do not pay rent for the occupation of the houses is not disputed. Such non-payment of the rent would lend support to the proposition that the use of these occupied houses is but incidental to the educational purposes of petitioner. Considering further the progressive and wholesome tendency of modern educational institutions to establish compact educational communities by themselves, we believe that such residence or occupancy of the buildings is an appropriate and convenient use of the properties affected to carry out the purposes of petitioner (see Roman Catholic Church v. Hasting, 5 Phil. 701) or is a necessary incident of petitioner's pursuit of diffusing the benefits of education.

> "As a general rule, residences for teachers erected upon or near the college grounds are held to be exempt, and similarly, the exemption of the school is not lost because the principal and his family resides in the school building." (51 Am. Jur. Sec. 622, p. 598.)

> "The dwellings of an educational institution reasonably necessary for institutional use are ordinarily exempt when used as residences by teachers, officers, or other employees." (41 C.J. 477.)

Considering further that Mr. Aznar is the President and head of petitioner as an educational institution, the residence used by him and covered by Tax Declaration No. 61240 must be likewise considered exempt. Such a dwelling must be considered as reasonably necessary for the institutional use to carry out petitioner's educational purposes. If the use of the buildings is an incident of petitioner's purpose, it follows that the use of the lands on which said buildings are constructed is of the same nature.

Likewise, with respect to the Coop Building covered by Tax Declaration No. 61243, located within the school compound, we believe that the same should be exempt from realty taxes. The upper floor of this building is used for classrooms. The major part of the ground floor is used as a mess hall for the students, with only a very small portion which is occupied by the School Hospital Bakery which primarily produces bread for the hospital staff, nurses and patients in petitioner's hospital, which is an adjunct of its medical school. Respondents wish to capitalize on its theory that the said bakery bakes bread which is sold to students and thus argue that this fact takes away the building from the privilege of the tax exemption. We find however that the evidence shows that the bakery uses about one or one-half sack of flour every evening in the making of bread which shows the limited size of the bakery and its output as to indicate that the sale of bread to the students is negligible if not nil. At any rate, this fact alone, we believe, does not affect the use to which the building is devoted, as for educational purposes. The weight of authorities hold that "dormitories and dining halls furnished by a college for the use of its students are clearly exempt" (51 Am. Jur. Sec. 622, p. 598) and this would necessarily include a bakery which bakes bread for the students.

> "The dormitories and dining halls and other equipment of a college are not taxable merely because the students are charged rent for the rooms in the dormitories and fees for the use of the other equipment." (Chicago v. University of Chicago, 228 III 605, 81 NE 1138, 10 Ann Cas 669.)

> "In determining whether property is exempt as 'used exclusively' for certain purpose, it is the primary use to which the property is put and not its secondary use which is to be considered. If the primary use is a use to which the exemption extends, it is immaterial that the secondary or incidental use is for a purpose not embraced within the exemption. This is the general rule. 'Exclusively used' according to the better decisions, means the primary and inherent use and does not preclude such incidental uses as are directly connected with, essential to and in furtherance of, the primary use. To illustrate: the primary use of a building may be for the purposes of a charitable or religious or educational institution, so that the exemption is not wholly or partly lost because on occasions the building or a part of it is used for social purposes or let out to others for entertainment or the like for which an admission fee is charged, or where such use is merely incidental to the principal use. On the same theory, school property will not lose its exemption by being leased in vacation." (II Cooley, The Law on Taxation, 1924 ed, pp. 1433-1434.)

It necessarily follows that the land on which the Coop Building stands is likewise tax exempt.

Relative, however, to Warehouses Nos. 1 and 2, covered by Tax Declarations Nos. 61244 and 61245, respectively, and the Accounting Building covered by Tax Declaration No. 61247 which are all likewise found within the school compound, we believe the same may not be declared tax exempt. We noticed that the warehouses in question were primarily used by Matias H. Aznar as bodega for surplus goods (medical and otherwise) which he has purchased in connection with his other enterprises, but certainly not for educational purposes. While it is true that said bodegas were also being used to store school equipment and supply, said use was merely incidental to its primary use as bodega for the personal profit of Matias H. Aznar. We are inclined to give weight to the testimony of the field man from the City Assessor's Office that said bodega was used for storing bales of tobacco used in the tobacco trade, one of the businesses engaged in by the Aznar enterprises.

As for the Accounting Building in question, we noticed that the same housed an accounting office which was more or less an accounting office for the whole Aznar enterprises and not for the Southwestern Colleges alone. Its use therefore as an accounting office of petitioner was merely incidental to its being used as accounting office for the varied enterprises of Mr. and Mrs. Matias H. Aznar, hence it can not be satisfactorily stated that the said building was being primarily and exclusively used for educational purposes.

> "In the final analysis, the exemption depends upon the particular statutory or constitutional provision involved and the facts and circumstances to which its application is invoked. Moreover, the occupancy of real property by an educational institution or its officers for the purposes for which it was established, in order to exempt the property from taxation, must have, or be supposed to have, a direct connection with such purposes, and dwelling houses belong to a college and rented by teachers for their own convenience and not for the benefit of the college are not exempt." (51 Am. Jur. Sec. 622, p. 598.)

> "Obviously, the occupancy of property as a residence by the president of a school and his family does not in and of itself constitute its use for educational purposes. But neither is it inconsistent with its exclusive use in that way. Where such occupancy is for the benefit of the school rather than of the occupant—is intended to serve the ends for which the school is maintained, is adapted thereto and actually accomplishes that object—it becomes in itself an exclusively educational use." (Kansas Wesleyan University v. Saline County, 120 Kan 496, 243 P 1055.) "Nor has it been held, exempt, where the proprietors or teachers live in the building for convenience of personal advantage." (Watson v. Cowles, 611 Neb 216, 85 N.W. 35.)

As regards the lands in question, it may be fairly said that the entire landed property constitutes part of the school site of petitioner and should therefore be considered exempt from realty taxes in its entirety.

We have heretofore intimated that the additional condition imposed by Section 51 of Commonwealth Act No. 58, that the lands or buildings should not be used for profit in order to merit exemption from taxation is not within the contemplation of the constitutional provision and, therefore, cannot override that imposed by the latter provision. However, even assuming arguendo that said lands or buildings should not also be used for profit, we are still constrained to rule in favor of petitioner. There is no evidence that petitioner profited from the use of the lands in question. There is equally no showing that the Aznar spouses gained from such use by petitioner. The fact that shares of stock worth ₱150,000.00 were received is not indicative that the Aznar spouses profited from the use. It must be remembered that the shares of stock were the consideration for the conveyance of the lands and the buildings in question, not a rental/or compensation for the use. The receipt of the shares of stock is not profit within the scope of Section 51 of Commonwealth Act No. 58.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Cebu Board of Tax Assessment Appeals appealed from should be, as it is hereby modified. The landed properties covered by Tax Declarations Nos. 28508, 30950, 38455, 39509, 39510, 39511, 39512 and 39513 as well as the buildings and improvements covered by Tax Declarations Nos. 4071, 61240 and 61243, of the City of Cebu are hereby declared exempt from realty taxes since 1946 as property used exclusively for educational purposes by petitioner Southwestern Colleges, Inc. and the City Assessor of Cebu is accordingly ordered, to include these properties in the list of real properties which are exempt from realty taxes. The following buildings or improvements of petitioner to wit: Warehouse No. 1, covered by Tax Declaration No. 61245; Warehouse No. 2, covered by Tax Declaration No. 61243; and the Accounting Building, covered by Tax Declaration No. 61247, are hereby declared subject to realty taxes and the corresponding realty tax assessment thereon hereby declared valid. Without pronouncement as to costs.

SO ORDERED..

Manila, July 22, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Not appealed

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