

1977 S.C. Op. Atty. Gen. 146 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-194, 1977 WL 24536

Office of the Attorney General

State of South Carolina

Opinion NO. 77-194

June 23, 1977

***1 Real property to be exempt by the provisions of Article 10, Sections 3(c) and (d) of the Constitution, as amended by Senate Bill S-437, must be actually occupied by the owner of such property.**

TO: State Senator

You have asked this question: ‘Specifically, we would like your opinion on the language in Section 3 (Article 10 of the Constitution, as amended) which restricts the exemptions provided in sub-items (c) and (d) to real property which does not ‘extend beyond the buildings and premises actually occupied by the owners of such real property.’ Does this provision mean that the owner must affirmatively occupy the property, or does it mean simply that the property may not be occupied by anyone other than the owner? If the owner must affirmatively occupy the property, to what extent must he do so in order to qualify for exemption under sub-items (c) or (d)?’

The provisions of the Article provide:

‘There shall be exempt from ad valorem taxation:

(c) all property of public libraries, churches, parsonages and burying grounds;

(d) all property of charitable trusts and foundations used exclusively for charitable and public purposes; * * *.

The exemptions provided in sub-items (c) and (d) for real property shall not extend beyond the buildings and premises actually occupied by the owners of such real property.’

The requirement is that the property be ‘actually occupied’ by the owners. A similar limitation is contained in the present provisions of Article 10, Section 4 of the Constitution and acts to extend the exemption to property not occupied were held to be unconstitutional. See *Strong v. Strong*, 185 S. C. 203, 193 S. E. 649; *Wofford College Trustees v. Spartanburg*, 201 S. C. 315, 23 S. E. 2d 9.

The term ‘actually occupied’ has not been interpreted or defined by our courts, however, it is stated in 84 C.J.S., *Taxation*, Section 282(f) that:

‘Statutory requirements that property of a charitable organization, in order to be exempt, be occupied by it have been construed as requiring actual occupation, as distinguished from ownership, possession, or trivial use.’

Additionally, *Webster's New Collegiate Dictionary* defines ‘actually’ to mean:

‘In act or in fact; really.’

The same authority defines ‘occupy’ to mean:

‘To take or enter upon possession of, as a place by settling in it or conquering it. To be in possession of on tenure, hold, as an office; dwell in, as a tenant.’

Therefore the owner must in fact occupy the property before the property is exempt. What constitutes occupancy is factual and it would not be possible to establish an exclusive definition. The occupancy, however, is more than constructive and it is something greater than possession. The constitutional provision recognizes the difference between ownership and occupancy, therefore mere ownership is not sufficient. Whether property is actually occupied within the meaning of the provision must be determined upon consideration of all facts relative thereto.

AUTHORITIES:

*2 Article 10, Sections 3(c) and (d) of the Constitution as amended by Senate Bill S-437 and Article 10, Section 4 of the present Constitution.

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