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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CONGREGATION B'NAI JESHURUN,)

Plaintiff-Appellee,) Filed September 23, 1980

vs.)

BOARD OF REVIEW OF THE CITY OF DES MOINES, IOWA,) 0-243
2-64302

Defendant-Appellant.

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendant board of review appeals from trial court ruling that a house furnished by plaintiff synagogue to its custodian is exempt from property taxation under section 427.1(9), The Code 1979. - AFFIRMED.

Allan A. Herrick & William R. Clark, Jr., of Herrick, Langdon & Langdon, Des Moines, for defendant-appellant.

Robert E. Mannheimer & Barbara Barrett, of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

OXBERGER, C.J.

Defendant, board of review, appeals from trial court ruling that a house furnished by plaintiff, Congregation B'nai Jeshurun, to its custodian is exempt from property taxation under section 427.1(9), The Code 1979. We affirm.

The Congregation protested a property tax assessment on residential property they owned. The property is a large three-bedroom house with garage situated on a lot immediately adjacent to the Congregation facility. The Congregation purchased the property in 1975 and rented it out for $300 per month. In 1977, the Congregation decided the custodian should be required to live on the premises to provide better security, improved maintenance, convenient access, and availability in emergency situations. The employment agreements between the Congregation and their custodial employee since that time have included that requirement. The occupancy of the house was valued at $150 a month, and this amount was deducted from the custodian's wages. The garage is used to store outside equipment and records of the Congregation.

The trial court found the property was furnished to the custodian to enable him to perform his duties in furthering the purposes of the Congregation. The court ordered the property exempt under section 427.1(9) as being used solely for the appropriate objects of the Congregation. The board appealed that ruling. Our review of tax exemption cases is de novo. Iowa R. App. P. 4; Southside Church of Christ v. Des Moines Board of Review, 243 N.W.2d 650 (Iowa 1976).

The board urges that Iowa law requires a literal construction of the tax statute. Certainly, the trend is toward more strict construction. See Wisconsin Evangelical Lutheran Synod v. Regis, 197 N.W.2d 355, 357 (Iowa 1972). Section 427.1 states, in part:

> The following classes of property shall not be taxed:
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> * * * *
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> 9. Property of religious, literary, and charitable societies. All grounds and buildings used . . . by literary, scientific . . . and religious institutions and societies solely for their appropriate objects, . . . and not leased or otherwise used . . . with a view to pecuniary profit. . . .

The board argues the Congregation did not meet the second requirement of their burden; namely, showing the property was "solely used for their appropriate objects."

In Southside Church of Christ v. Des Moines Board of Review, 243 N.W.2d 250 (Iowa 1976), the court required more than a showing of employment and ownership by the charitable organization. Rather, the court considered the use made of the property. However, use as a residence does not preclude exemption if that use is required and necessary to fulfill the organization's appropriate objects. Southside does not require us to find exemption status only as to property actually used to house the sermons and songs of the Congregation. A janitor whose services are necessary to the Congregation facility itself and whose immediate availability is necessary and required to provide those services serves as an appropriate object of an organization. The fact that the property is used as his and his family's residence is incidental to the benefit and attainment of goals of the Congregation. The property and its proximity to the temple is necessary to attain the Congregation's goals.

The board also relies on Wisconsin Evangelical Lutheran Synod v. Regis, 197 N.W.2d 355 (Iowa 1972). However, the employee in that case was not required to live in the residence provided by the organization. The court especially noted that missing limitation. Additionally, the court found the employee had a complete right of privacy in the residence. In the instant case, the residence, presently the garage, is used for overflow storage by the Congregation. The custodian, although having access to the entire residence, does not have complete control over it.

The board asserts the Congregation is making a pecuniary profit by the reduction of wages paid to the custodian. We find the Congregation is not profiting from the arrangement. We affirm the trial court's decision that the property held by Congregation B'nai Jeshurun to house its janitor is tax exempt.

AFFIRMED.