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SELECT STATE AND LEGISLATIVE DEVELOPMENTS*

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When the task was given to me to be part of the Panel Presentation, I felt our experiences in Massachusetts regarding Tax Exempt Church Property would be of interest to the Diocesan Attorneys across the country. I therefore set out the following:

THE EROSION OF TAX EXEMPT PROPERTY OWNED BY RELIGIOUS ORGANIZATIONS

PROBLEM:

The tax exempt status of property owned by religious organizations is being affected by a multiplicity of factors in Massachusetts.

Presently, in Massachusetts, church rectories or parsonages, whether attached or unattached to the main church, have a real estate tax exemption of \$100,000. This exemption falls under Massachusetts General Laws, Ch. 59, §5, Clause 11. The exemption was raised from \$20,000 to the present \$100,000 by Ch. 263 of the Acts of 1976. Historically, in Massachusetts, the rectory or parsonage had never been taxed, but for some reason the Legislature never gave these structures a total exemption. In addition, these same structures, along with the church, had never been assessed so-called user fees for such services as fire and police protection.

During the years I have been with the Massachusetts Catholic Conference there were efforts via legislation to try to assess such services to various property owned by religious and other non-profit organizations. However, we were always able to defeat them. We are now finding that in Massachusetts, because of certain events which took place over the last three years, church property such as the parsonages and rectories are be-

* The following articles by Gerald D. D'Avolio, Howard J. Fetterhoff, and Charles J. Tobin are adapted from their remarks in a panel discussion on the topic of Select State and Legislative Developments.

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ing taxed, and are also being assessed for certain services by the cities and towns.

In my judgment, I do not believe this gradual erosion of tax-exempt status for church property was intentional. We must, however, review the causes for this.

In 1974, the Massachusetts Supreme Court in the case of *Town of Sudbury v. Commissioner of Corporations and Taxation*, 321 N.E.2d 641 (1974), interpreted Section 38 of Chapter 59 of the Massachusetts General Laws as mandatory. Real property in every city and town in the Commonwealth of Massachusetts must therefore be assessed at the fair cash value. Up until then, and through 1981, most of the cities and towns had not fully evaluated their property. Implementing Section 38, Chapter 59, would be an immense task, but, nevertheless, it had to be done. As we reviewed this situation at the Massachusetts Catholic Conference, we decided that as the town re-evaluated its property, our rectories, many of which were fairly old, well-constructed brick and mortar structures, certainly would be evaluated much higher. Therefore, in 1976 we raised the tax exemption from \$20,000 to \$100,000.

The re-evaluation effort was also followed in 1980 with the State Referendum called "Proposition 2 ½," which was passed overwhelmingly by the voters of Massachusetts. This is cited as Chapter 580 of the Acts of 1980 and is further amended by Chapter 786 of the Acts of 1981.

The Referendum emphasized two areas of taxation: real property could not be taxed any more than 2½ percent of its assessed value and excise tax on automobiles was reduced from sixty-six dollars (\$66.00) per thousand dollars assessed valuation to twenty-five dollars (\$25.00) per thousand dollars. The cities and towns had a three-year period in which to implement the citizens' mandate. During the last two years, as the cities and towns agonized over this sudden and major loss of revenues, they had to look for whatever new source of revenue they could find. Many public school education programs were being cut back and various services such as police and fire protection were also being reduced. The impact, in general, was felt more in the larger cities, especially in the City of Boston where a number of school teachers, policemen, and firemen had to be laid off.

In 1981, the Legislature granted more local aid to try to ease the impact of 2½ but it was not sufficient.

In 1982, I began receiving telephone calls from various parishes that the assessed values for their rectories suddenly were rising drastically, i.e., one rectory went from \$68,000 evaluation to \$248,000; another from \$98,000 evaluation to \$275,000; and so on. Rectories which never had to pay any real estate taxes before were suddenly getting bills from city or town collectors averaging between \$3,000 and \$6,000.

We are presently trying to remedy this situation with legislation,

House Bill 1394, which would raise the exemption from its present \$100,000 to \$400,000. We think we will be successful this year and hopefully the bill will be approved with retroactive application back to the time the property was re-evaluated. All of the other religious denominations are also supporting this legislation.

As I mentioned earlier, the City of Boston was most hard hit by "Proposition 2 ½." They were reaching out to capture whatever source of revenue they could find. One approach was Chapter 6 of the City of Boston Ordinances of 1983. This Ordinance allowed the City of Boston to assess a so-called fire protection user fee to all buildings owned by non-profit organizations, which included church property. In implementing this ordinance, the City of Boston based its assessment of fire protection on the square footage of property and the amount of fire protection equipment that would be necessary in case of fire. Also included would be the amount of water consumed. What occurred was that a number of inner city parishes of various denominations, many of which were poor, received bills from \$6000 to \$10,000. All of the colleges and universities also received substantial bills. This ordinance was immediately challenged in the case of *Emerson College v. City of Boston*, Superior Court Docket #CA 59613. On April 1, 1983, the judge in that case, which was initially heard in March, granted a stay on any implementation of the ordinance and reported the entire case to the Massachusetts Appeals Court.

The basic thrust of the argument used by the plaintiff was that the fee, which was assessed by the fire department, was a form of tax and thus unconstitutional.

In the view of our experience in Massachusetts, I would suggest that states contemplating similar proposals such as our Proposition 2½ Referendum thoroughly review the potential implications on church property and other non-profit entities related to religious organizations.

Because of the limited amount of time, it would be impossible to go over the additional negative ramifications of Proposition 2½ such as major cutbacks in non-public school transportation programs.