

Opinion No. 47-4996

March 11, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. E. T. Hensley, Jr. District Attorney Ninth Judicial District Portales, New Mexico

{*19} We wish to acknowledge receipt of your inquiry of the 4th instant pertaining to the proper interpretation of Section 76-111 ff., New Mexico Statutes Annotated, 1941 Compilation.

On the 19th of December, 1946, I wrote an advisory letter to Mr. Theodore Rozzell, Representative in the State Legislature from Curry County, in regard to the same factual situation presented in your inquiry.

In my letter of that date to Mr. Rozzell, I enclosed copies of two previous opinions rendered by this office which I concluded furnished a basis for stating that it was my belief the party in question was entitled to the exemption provided for under our laws as she was a resident, unmarried widow of a soldier who had served more than thirty days in the armed forces {*20} while the United States was officially engaged in war.

Since receipt of your inquiry I have re-examined the pertinent statutes and have discussed Section 76-111 in particular with four other attorneys who are in this office.

I deem it advisable to set forth at this time Section 76-111 of the New Mexico 1941 Compilation which reads as follows:

"76-111. 'Soldier' shall mean every honorably discharged soldier, sailor, marine and army nurse **resident** of New Mexico and who served in the armed forces of the United States for thirty (30) days or more at any time in which the United States was officially engaged in any war, including resident, unmarried widows of **such** soldiers, sailors and marines."

To determine what resident, unmarried widows are entitled to claim the exemption, it is necessary, due to the term "such soldiers", to read all provisions of Section 76-111.

Therefore, before a resident, unmarried widow is entitled to claim the exemption it is necessary that she be an unmarried, resident widow of a soldier, sailor or marine who was a **resident** of the State of New Mexico prior to January 1, 1934.

Under the facts submitted this resident widow's husband was never at any time a resident of the State of New Mexico.

Therefore, I must confess that I made an honest mistake when I advised Mr. Rozzell that such widow was entitled to the soldiers' exemption in my letter to him of December

19, 1946, and hereby state that it is the opinion of this office that said party is not, under our law, entitled to claim said exemption.

This conclusion must necessarily be reached if one follows the law as laid down by our Supreme Court in the case of "Church of the Holy Faith, Inc., v. State Tax Comm., et al." 39 N.M. 403, at page 413; 48 P. 2d 777, wherein the Court stated:

"The general rule is that laws and constitutional provisions exempting property from taxation are to be strictly construed."

Trusting that the aforementioned satisfies your inquiry and thanking you for your resubmission of this matter, I remain

By ROBT V. WOLLARD,

Asst. Atty. General