

Opinion No. 48-5126

February 9, 1948

BY: C. C. McCULLOH, Attorney General

TO: J. V. Gallegos Assistant District Attorney Tucumcari, New Mexico

{*128} We are in receipt of your letter of February 3, 1948 and enclosed letter from David S. Bonem in which he asks whether land owned by a Garden Club is exempt from taxation under Article 8, Section 3, as property used for educational purposes.

In Mr. Bonem's letter he states that the Garden Club has never been used for profit -- that the purpose of the club is to create interest in the art and culture of gardening and to educate the members along that line.

It is possible that if it were proven that the main purpose of the club was to educate persons in horticultural pursuits, the property of the club might be exempt from taxation. However, your attention is called to the case of Albuquerque Alumnae Association v. Tierney, 37 N.M. 156, in which the Court held that a sorority was not exempt from taxation as an educational corporation.

In the case of Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, the Supreme Court of New Mexico, quoting from the Supreme Court of the United States, established this rule of construction:

"The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted: It cannot exist by implication only; a doubt is fatal to the claim."

In view of the foregoing, it is my opinion that an exemption should not be allowed the Garden Club unless a hearing is held at which testimony is introduced showing that the sole, or at least primary, purpose of the use of the land is for educational purposes.

Your attention is directed to the case of In Re Arnot's Estate, 130 N.Y.S. 499, 145 App. Div. 708, and the case of In Re Mergentime's Estate, 113 N.Y.S., 129 App. Div. 367, which hold that an art gallery, used for the encouraging and developing of the study of fine arts, was an educational corporation.

See also Tomay vs. Crist, 226 P. 156, holding that a library association was an educational association.

The case nearest in point is the case of Watton vs. Cruce, et al, 143 P. 1152 in which the Court held that a private corporation, promoted to "collect, arrange, classify, and display at the Jamestown Exposition the agricultural, horticultural, mineral,

manufacturing, and others divers resources of the state of Oklahoma" is educational in its primary object.

By ROBERT W. WARD,

Asst. Atty. General