

Opinion No. 49-5187

January 15, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Robert W. Reidy Assistant District Attorney Second Judicial District Second Floor Court House Albuquerque, New Mexico

{*6} We have your letter of December 16, 1948, requesting the opinion of this office upon the following:

"Whether or not a soldier's widow who has remarried and has obtained a divorce from the remarried spouse returns to her status as an 'unmarried widow' under Section 76-111, New Mexico Statutes, Annotated."

Section 76-111 of the 1941 Compilation, as amended in 1947, provides:

"Soldiers' shall include 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 ninety (90) days at any time in which the United States was officially engaged in any war, and shall include persons of either sex as such soldiers, sailors, and marines, and shall also include resident unmarried widows of such soldiers, sailors and marines, excepting World War I Veterans who became residents of the state after January 1, 1934, who did not serve in World War II."

Research has indicated that "unmarried widow" has been defined both as one who has not remarried **and** as one who has remarried and divorced. The courts have differed upon the intent of the particular instrument. In a case such as this, the widow would not be allowed a pension under the laws of the Federal Government. However, those statutes are specific upon the subject.

We feel that such a person as is the subject of this opinion has abandoned her rights upon remarriage, and cannot thereafter reassert them after a divorce. If the marriage had been annulled, a different result might prevail, since there would not have been a valid marriage to remove the spouse from the "unmarried" category.

It is our opinion that it was the legislative intent to allow the exemption to the widow so that taxes on property after the soldier's death would not be increased, thus working a hardship upon the widow. Upon the remarriage of the widow, such exemption ceases because the primary obligation for her support and care rests upon her present husband, and puts to rest the obligation of the deceased husband to provide for her through accumulations of his lifetime. Through the divorce {*7} laws of this state, the divorced husband may be required to make provision for the wife if the court deems such necessary.

Perhaps we have misinterpreted the legislative intent, but if so, with the Legislature now in session, the problem will be called to their attention, thus giving an opportunity for a clear declaration of their intent if they deem it contrary to this opinion.