

**Opinion No. 55-6088**

January 26, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Thomas G. Cornish Assistant District Attorney, Albuquerque, New Mexico

In your letter dated January 19, 1955 you refer to Article 8, Section 3 of the Constitution insofar as it pertains to Church property and give the following facts:

"One of our local churches has several tracts of land from which it derives income. No church buildings are located upon these tracts. Almost all of the income from the property involved is used for charitable purposes.

It has been the practice of the County Assessor to require churches to pay taxes upon income property but not upon property where church buildings are located."

You request our opinion concerning the correctness of the practice by the County Assessor under the Constitutional section above mentioned.

The specific question has been ruled upon by the Supreme Court in at least two decisions. These are Church of Holy Faith vs. State Tax Commission, 39 NM 403, 48 P 2nd 777, and Trustees of Protestant Episcopal Church vs. State Tax Commission 39 NM 419, 48 P 2nd 786.

In the Church of the Holy Faith case, supra, the Court used this language:

"Our conclusion would logically lead to a holding that buildings with land they occupy and furnishings therein, used for religious purposes, or for residence of the priests or ministers, together with adjacent land reasonably necessary for convenient use of such buildings, are exempt from taxation."

The Court further uses the following language:

"We conclude that the property in question is not being used for religious purposes and therefore is not "Church property", and also that said property is not being used for "charitable purposes" and is therefore subject to taxation. The fact that the rents accumulated from such property are used for religious or charitable purposes does not alter the situation."

In view of the Supreme Court's conclusion that use of church property for religious or charitable purposes is necessary before the property is exempt, it is our opinion that the Assessor is correct in taxing income property of churches regardless of the fact that the income or most of it is used for charitable purposes.

By: C. C. McCulloh

Assistant Attorney General