

Opinion No. 55-6171

May 23, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Kermit Nash, Assistant District Attorney, Fifth Judicial District, Hobbs, New Mexico

You request an opinion concerning a question of taxability for ad valorem taxes of property owned by an organization known as the Lovely Ladies Club in your County.

Article VIII, Section 3 of the Constitution exempts all property used for educational or charitable purposes from ad valorem taxes, and I presume the above named organization claims to be exempt in view of the constitutional language.

From the information at hand it appears that the Lovely Ladies Club was organized for the purpose of providing nursery facilities for the mothers who work and need baby sitting services. You indicate that this is an organization formed by a group of local women and it appears that said organization was incorporated as a non-profit organization.

The sole question to be determined is whether or not this falls within the category of a charitable organization, because as our Supreme Court has stated, it isn't what the purpose of an organization is, it is the use made of the property which is controlling in determining whether or not the exemption from taxation will apply.

In defining charitable purposes the following is quoted from 14 C.J.S., at page 439:

"Broadly, a charitable use or purpose may, where neither law nor public policy forbids, be applied to almost anything tending to promote the well doing and well being of social man, but the use or purpose must be a public, as distinguished from a private one, for the benefit of the public at large or of a portion thereof or for the benefit of an indefinite number of persons."

This office does not feel that from the information on hand that this association falls within the category of a charitable organization.

Our Supreme Court has had this constitutional provision before it several times, (Albuquerque Alumnae Assn. of Kappa Kappa Gamma Fraternity v. Tierney, 37 N.M. 156; Albuquerque Lodge, No. 461, B.P.O.E. v. Tierney, 39 N.M. 135; and Church of the Holy Faith v. State Tax Commission, 39 N.M. 403) and in each case a strict construction has been placed upon this Article of our Constitution.

Hoping this satisfactorily answers your inquiries, I remain,

By: J. A. Smith

Assistant Attorney General