

Opinion No. 55-6293

September 30, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Matias L. Chacon, Chairman, Committee on Committees, House of Representatives, Santa Fe, New Mexico

We have your letter of September 19 in which you request an opinion from this office as to whether the V.F.W., when engaging in a Poppy Drive, comes within the provisions of Chapter 249 of the Session Laws of 1955. Chapter 249, Laws of 1955, Section 1 (a), reads as follows:

"Charitable organization.' Any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such."

Section 2 of the same law provides for the registration of such organizations unless they come within the exemption set forth in Section 3. Section 3 provides exemptions to the following:

- (a) Corporations organized under the religious corporation laws of New Mexico;
- (b) Educational institutions when the solicitations are from the student body and their families, alumni, faculty, and trustees;
- (c) Fraternal, patriotic, and social organizations when the solicitation is confined to the membership;
- (d) Persons requesting contributions of named individuals and where the contributions are turned over to such beneficiary without deduction.

Quite clearly the Veterans of Foreign Wars in its annual Poppy Drive does not come within the exemption. Equally as clear is the fact that the V.F.W. is a patriotic organization and comes within the definition set forth in Section 1 (a). We are, therefore, of the opinion that the V.F.W. would have to register under the provisions of Chapter 249, Laws of 1955, in order to have the annual Poppy Drive.

We are not unmindful of the fact that the Veterans of Foreign Wars was incorporated by the Congress of the United States, Title 36, Chapter 7 (a), Sections 111 to 120, inclusive, U.S. Code. We note that Section 119 of the above named Title provides as a condition for the V.F.W. operating in any state that such organization must name a statutory agent with the secretary of each state in which it wishes to operate. This statutory agent is for the purpose of receiving service of process. For this reason, we feel that Congress did not intend the V.F.W. to be exempted from the reasonable regulations of the various states.

We would further point out that the requirements of registration in order to have the right to solicit contributions as provided by Chapter 249, Laws 1955, does not in any way impair or interfere with the purposes and operations of the V.F.W. within the State of New Mexico. New Mexico would have the right to provide such reasonable regulations for Federal corporations so long as such regulations do not interfere with such organizations' capacity to operate and serve the Federal Government. See Fletcher, Cyclopedia Corporations, Vol. 17, Section 8397.

Trusting we have answered your request, we remain

By Paul L. Billhymer

Assistant Attorney General