

## **Opinion No. 58-222**

November 10, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M Rosenthal,  
Assistant Attorney General

**TO:** Manuel A. Armijo, Director, New Mexico Veteran's Service Commission, P. O. Box  
1723, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Is the resident unmarried widow of a Spanish American War veteran who never resided in New Mexico, entitled to tax exemption benefits as provided in Ch. 169, Laws of 1957?
2. What specific residence date should we require of veterans who served in armed conflicts prior to World War I in determining entitlement for certificates of eligibility as provided in Ch. 169, Laws of 1957?

#### CONCLUSIONS

1. Yes.
2. None.

### **OPINION**

#### ANALYSIS

Several ambiguities appear in the correspondence concerning this matter. No doubt, this is due to the fact that at least three people have made at least partial inquiry on this subject. There is a confusion of names, an ambiguity of service dates by the veteran in question and at least two typographical errors, one concerning the qualifying date of service by the veteran during the Moro Province Insurrection and the substitution of the word "veteran" for "resident".

Consequently, this office, in issuing this opinion, is making certain necessary presumptions, the validity of which must be asserted in order that this opinion apply to the situation.

The presumption is that the veteran of whom the named individual is an unmarried widow is qualified in other respects than is here in issue for the veteran's tax exemption.

We refer to the definition of "soldier" presented in Chapter 169, Laws of 1957, more specifically, Section 1, which amends Sec. 72-1-11. Therein it is stated:

"Soldier shall include every honorably discharged member . . . of the armed forces who served in the armed forces of the United States for 90 days at any time during any period in which the military forces are engaged in armed conflict under orders of the President of the United States . . . provided, however, that World War I veterans shall become residents of the state prior to January 1, 1934; that World War II veterans shall have become residents of the state prior to January 1, 1947; and Korean conflict veterans shall have been residents of the state prior to January 1, 1955; and provided further that such honorably discharged members of the armed forces shall also include resident unmarried widows of such honorably discharged members of the armed forces . . ."

It is to be noted that no specific residency date requirement is provided for in the statute for those otherwise qualified veterans of armed conflicts prior to World War I; that the statute does not set up any additional requirements for the unmarried widows of such veterans; and that the statute refers to "resident unmarried widows" and does not refer to "resident unmarried widows of resident veterans". The doctrine of "Expressio unius personae est exclusio alterius" has so frequently been passed upon favorably by our Supreme Court and this office that we do not feel citation to be necessary. We are of the opinion that a resident unmarried widow as described in your first question or resident veteran of an armed conflict prior to World War I as described in your second question are both entitled to the statutory exemption without showing of the residence status as is required in armed conflicts commencing with World War I and continuing to date.

Reference has been made to the Attorney General's Opinion No. 57-195, issued by this office, concerning this same matter in which reference is made to the case of **Flaska v. State**, 51 N.M. 13. In this case, our Supreme Court held that soldiers of all wars who are otherwise qualified had to secure residency prior to January 1, 1934, in order to secure the tax exemption. We wish to point out that **Flaska v. State** was decided on the basis of Chapter 44, Laws of 1933, which amended the then existing tax exemption statute. The specific words of the 1933 law pertaining to this subject are:

"Provided, however, that such exemption from taxation shall not be permitted to be claimed by nor allowed to any soldier who has not, prior to January 1, 1934, acquired residence in the state of New Mexico."

Hence, this office here issues the opinion as contained in the conclusions above and if it be deemed that our Opinion No. 57-195 be so ambiguous as to constitute a contrary view then so much of that opinion as is necessary to be here reversed or modified is so treated.