

Opinion No. 61-35

April 27, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

TO: Mr. Manuel Armijo, Director, New Mexico Veterans' Service Commission, P.O. Box 1723, Santa Fe, New Mexico

QUESTION

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Is a widow of an eligible veteran, who remarried but subsequently had her marriage annulled, entitled to be restored to her former status of unmarried widow so as to entitle her to benefits under the Soldiers' Tax Exemption Statutes?

CONCLUSION

Yes.

OPINION

ANALYSIS

This office ruled in Opinion of the Attorney General No. 5187 dated January 15, 1949 that a widow who remarried but subsequently obtained a divorce was not entitled to a return to her status as an unmarried widow so as to entitle her to benefits under the Soldiers' Tax Exemption statutes. It was indicated in that opinion, however, that our conclusion might have been different had the widow's marriage been annulled rather than a divorce granted.

We here reaffirm that indication and hold that a widow of an eligible veteran is, if her subsequent marriage is annulled, entitled to benefits under the Soldiers' Tax Exemption Statutes (Section 72-1-11, et seq., N.M.S.A., 1953 Comp.) inasmuch as an annulment of a marriage restores a person to the status she held before the marriage, that is to say, as a matter of law an annulment declares that the marriage never existed rather than saying as in a divorce that a marriage existed but is now ended. Therefore, in legal contemplation the widow was never married so that she has not forfeited her status as an unmarried widow.