

Opinion No. 62-36

February 21, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: John Block, Jr., Chairman, State Corporation Commission, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Do non - profit organizations have to pay an ad valorem tax on their property, for example, on union halls and lodge buildings?

CONCLUSION

Yes, unless such property is used primarily for educational or charitable purposes.

OPINION

ANALYSIS

If the type of property to which you refer is to be exempt from ad valorem taxes, it is by virtue of Article VIII, Section 3, New Mexico Constitution, which exempts from taxation "all property used for educational or charitable purposes."

Consequently, in the absence of a specific factual situation a categorical answer to your question cannot be given. However, since the Supreme Court, as well as this office, has frequently been called upon to decide the taxability of property of various organizations, an enumeration of the decisions and opinions may be helpful to you.

Initially, however, we would emphasize that the mere fact that an organization is non-profit is not sufficient to bring it under the constitutional tax exemption. And no matter how praiseworthy the purposes of the organization, there is no tax exemption unless the primary use being made of the property is educational or charitable. Opinion No. 60-63.

The property of a country club which was being used primarily for social and recreational purposes to enhance the enjoyment of its members and guests was held not to be exempt from ad valorem taxes. Opinion No. 5740 (1953-54).

In **Albuquerque Alumnae Association of Kappa Kappa Gamma v. Tierney**, 37 N.M. 156, 20 P.2d 267, the record disclosed that the sorority was a non-profit organization and that the property involved was used as a home for non-resident members.

Therefore, the use to which the property was put was beneficial to the institution since it obviated the necessity of providing additional dormitory space. The Sorority House was used by the students for study, recreation and social purposes. However, the Court held that the purpose for which the Sorority was organized is not the determining factor, but rather the use made of the property is controlling. Finding that the property was used primarily for dormitory and boarding house purposes, the Court held that the property was not exempt from taxation.

In **Albuquerque Lodge, No. 461, B.P.O.E., v. Tierney**, 39 N.M. 135, 42 P.2d 206, the Court justified the exemption of Elks Lodge property on the ground that the primary use was for charitable purposes even though the lodge had rooms in the building which it rented for profit.

Use of property by the Masonic Lodge was held to be charitable in the case of **Temple Lodge, No. 6, A.F. & A.M., v. Tierney**, 37 N.M. 178, 20 P.2d 280. Based on the facts in the case, the Court discussed the charitable uses made of the property, and emphasized that in order to be eligible for the exemption the use does not have to be exclusively charitable.

Chamber of Commerce property not exempt since its use is not primarily charitable or educational. Opinion No. 57-10.

In Opinion No. 57-86, we pointed out that the exemption of property owned by a woman's civic club would depend upon the actual use to which the property is put. The declared purposes and objects of such a club are not controlling.

We dealt briefly with labor union property in Opinion No. 59-7, and pointed out that if such property is used primarily for union purposes it is not exempt from taxation. In order to come within the Constitutional exemption the Union would have to establish that the property is being utilized primarily for educational or charitable purposes. Opinion No. 60-63. In the normal situation it would be unlikely that the union was making such use of its property.

This office has also ruled that the property of a Sheriff's posse is not exempt from taxation. Opinion No. 58-2.

As you can see from the above situations, the decision as to specific property will hinge on a factual determination of the use made of such property.