

Opinion No. 63-118

September 16, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Lorenzo A. Chavez, Chairman Statuary Hall Commission Bank of New Mexico Building Albuquerque, New Mexico

QUESTION

QUESTIONS

1. Would contributions made by private individuals to the Statuary Hall Commission be deductible from income for purposes of State Income Tax?
2. In 1951 the State Legislature passed legislation authorizing statues of Kit Carson and Bishop Lamy to be placed in Statuary Hall. In view of the great length of time that has elapsed without anything ever being done to place the statues of Kit Carson and Bishop Lamy in Statuary Hall, would there be any conflict with the actions being taken by the Committee pursuant to the 1963 act in raising funds?

CONCLUSIONS

1. Yes.
2. See Analysis.

OPINION

{*267} ANALYSIS

A brief survey of the applicable laws pertaining to the questions you have presented is essential to {*268} resolve these issues.

The 1963 State Legislature enacted Chapter 64, Laws of 1963, Section 1, which provides as follows:

"Under the provisions of 40 U.S.C., Section 187, New Mexico designates Senator Dennis Chavez as an illustrious citizen of the State worthy of national commemoration and directs that a marble or bronze statue of his likeness be placed in National Statuary Hall in Washington."

Section 2, of Chapter 64, Laws of 1963, also sets out:

"There is created the "Statuary Hall Commission" consisting of the governor as chairman and four other citizens of the state appointed by the governor. The Commission shall raise not to exceed twenty thousand dollars (\$ 20,000) by voluntary contributions and cause to be made a marble or bronze likeness of Dennis Chavez. When completed and accepted by the Commission, the likeness shall be placed in National Statuary Hall."

The National Statuary Hall was created by Congress, July 2, 1864 (40 U.S.C., Sec. 187) and the federal statute provides as follows:

"Suitable structures and railings shall be erected in the old hall of Representatives for the reception and protection of statuary, and the same shall be under the supervision and direction of the Architect of the Capitol. And the President is authorized to invite all the States to provide and furnish statues in marble or bronze, not exceeding two in number for each state, of deceased persons who have been citizens thereof, and illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this National commemoration; and when so furnished, the same shall be placed in the old Hall of the House of Representatives, in the Capitol of the United States, which is set apart, or so much thereof as may be necessary, as a National Statuary Hall for the purpose herein indicated."

Turning now to your first question, we find that Section 72-15-6, N.M.S.A., 1953 Compilation, defines what income is taxable by the State of New Mexico. This section specifies that "base income" of a taxpayer means that part of the taxpayer's income generally defined as federal taxable income and upon which the federal income tax is calculated less the federal income tax payable for the federal year. The New Mexico state income tax is levied upon the "net income" of all taxpayers. "Net income" is defined to mean the "base income" adjusted to exclude amounts previously paid to the State, or non-taxable, or adjusted to include amounts not deductible in computing the State income tax.

As set out in the above Section, the State of New Mexico taxes the amount of the "net income" of a taxpayer, which amount has excluded therefrom any valid federal income tax deductions (excepting those listed in Section 72-15-6, N.M.S.A., 1953 Compilation as not deductible under state law).

Since the New Mexico state income tax deductions are geared closely to federal allowable income tax deductions, we have requested the United States Treasury Department to certify that there may be properly deducted from the federal income tax such amounts {*269} as the taxpayer may have contributed to the Statuary Hall Commission of the State of New Mexico. As stated in a determination letter to this office from the District Director of the Internal Revenue Service, and dated August 26, 1963:

"The Statuary Hall Commission is a part of the New Mexico State Government and contributions to it exclusively for public purposes are deductible by the donors as provided in Section 170 of the (Internal Revenue) Code.

It is further determined that the use of the donations for the purchase of a statue of the former Senator Dennis Chavez to be placed in the National Statuary Hall in Washington, D. C. will be considered to be for a public purpose . . ."

Based upon the above, it is our opinion that contributions by donors to the Statuary Hall Commission of the State of New Mexico for acquisition of a statue is a properly deductible item for purposes of computing the New Mexico State income tax.

Your second question inquires whether prior legislation concerning the Statuary Hall Commission has been in part repealed by subsequent state legislation upon the same subject matter.

The twentieth state legislature enacted Laws 1951, Chapter 116, which act was signed into law March 13, 1951, and provided in part as follows:

"This Legislature passes this enactment for the purpose of placing statues in marble or bronze of Christopher (Kit) Carson and Jean Baptiste Lamy in National Statuary Hall in the capitol of the United States for . . . national commemoration.

. . .

It shall be the duty of such commission to cause to be made and created a statue in marble or bronze of the late Christopher (Kit) Carson and the late Jean Baptiste Lamy, Archbishop of Santa Fe, by a sculptor or sculptors of skill and renown in his or their profession, qualified to make and create such statutes. Such commission shall exercise such authority as to which it shall appear proper or necessary to fully carry out the purposes of this Act, and in so doing shall control the expenditure of the fund herein appropriated.

For the purposes of paying costs and expenses, incident to or necessary toward providing and furnishing such statues in carrying this act into effect, the necessary funds shall be raised by voluntary contributions, not to exceed the sum of twenty-five thousand dollars (\$ 25,000) for each statue, or any less sum necessary in the opinion of the commission to make and create such statues. . . ." (Emphasis supplied).

This office has inquired of the Architect of the Capitol, Washington, D. C., to ascertain if in fact any action was taken previously toward placing statues of Kit Carson or Archbishop Lamy in the Statuary Hall Commission in Washington, D. C. According to information received from the architect of the Capitol, the State of New Mexico has furnished no statues to date for the National Statuary Hall.

Since federal statutes (40 U.S.C., Section 187) limit the number of statues which a state may place in the Statuary Hall to **two**, and since by Laws 1951, Chapter 116, and Laws 1963, Chapter 64, the {*270} State legislature in fact has officially designated **three** historical personages and directed that statues of such persons be commissioned and placed in the nation's capitol, it is apparent that the earlier statutes (Laws 1951, Chapter

116) have been in part amended by implication by the latter statutes (Laws 1963, Chapter 64).

As stated in **Stokes v. New Mexico State Board of Education** (1951), 55 N.M. 213, 230 P.2d. 243:

"A statute is repealed by implication, though such repeal is not favored, where the legislative intent is manifest that the latter statute should supersede the former, and such intent is manifest where the legislature enacts a new and comprehensive body of law which is so inconsistent with and repugnant to the former law on the same subject as to be irreconcilable with it . . ."

See also, **State v. Valdez**, 59 N.M. 112, 279 P.2d. 868; and **Baca v. Board of County Commissioners**, 10 N.M. 438, 62 P. 979.

In accordance with the above New Mexico decisions it is our opinion that the 1963 legislative enactment directing the State Statuary Hall Commission to raise funds to secure a marble or bronze statue of Senator Dennis Chavez is clearly controlling over the former act. This latter statute supersedes in part and controls over the earlier legislative enactment regarding which persons shall be honored by having a statue of their likeness placed in the National Statuary Hall in Washington, D.C. We believe the commission must comply with the 1963 statute and commission a statue of Senator Dennis Chavez to be placed in the National Statuary Hall.

However, since the 1963 Act only supersedes the 1951 act in part, and since the earlier statute states that it shall be the duty of the State commission to cause to be made a statue of two other historic personages of New Mexico, it is our opinion that the Commission should await further legislative provision as to which one of the other personages named in Laws 1951, Chapter 116, is to be also so honored. Since the legislature has by its more recent enactment made the former act at least in part impossible to carry out, it is our opinion that the legislature should be the authority which specifies which other historic personage, in addition to Senator Chavez, is to be honored in the federal Statuary Hall.

In our opinion, it is important that the Commission clearly appraise all donors of moneys to the State Statuary Hall Commission as to which statue the funds donated will be applied upon. In addition, if after further legislative action the Commission initiates a drive to obtain moneys for more than one statue, the Commission should establish two separate financial accounts in order that all donations received by the Commission may be correctly applied to the specific purpose which the donor intended and so as to comply with the legislative direction placing a total limitation on the amounts to be raised.

By: Thomas A. Donnelly

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