

Opinion No. 69-137

December 1, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Patrick Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico 88201

QUESTIONS

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Is property in the name of New Mexico Military Institute Foundation, Inc. subject to ad valorem taxation?

CONCLUSION

Yes, but see analysis.

OPINION

{*221} ANALYSIS

The New Mexico Military Institute Foundation, Inc. is organized as a non-profit corporation.

The Constitution sets forth the only areas of allowable ad valorem tax exemption. Article VIII, Section 5, authorizes the legislature to provide for exemptions for heads of a household and for veterans. Article VIII, Section 3, reads as follows:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation.

Provided, however, that any property acquired by public libraries, community ditches and all laterals thereof, property acquired by churches, property acquired and used for educational or charitable purposes, and property acquired by cemeteries not used or held for private or corporate profit, and property acquired by the Indian service, and property acquired by the U.S. Government or by the state of New Mexico by out-right purchase or trade, where such property was, prior to such transfer, subject to the lien of any tax or assessment for the principal or interest of any bonded indebtedness shall not

be exempt from such lien, nor from the payment of such taxes or assessments. (As amended November 3, 1914 and November 5, 1946.)"

No exemptions except as specified in the constitution are allowable. {*222} Opinion No. 2086, Report of the Attorney General 1917-1918, p. 153, **Sims v. Vosburg**, 43 N.M. 255, 91 P.2d 434.

In **State v. Locke**, 29 N.M. 148, 219 P. 790, 30 A.L.R. 407, the Court discussed the theory of taxation and exemption at some length. The Court stated that the granting of an exemption to church property, public libraries, educational and charitable institutions and cemeteries not held or used for private or corporate profit, was a matter of policy. It stated that exemptions granted to the United States were probably required and exemptions to the state and its subdivisions as another type of policy since it would be an exercise in futility for the state to tax its own property to produce operating funds. In **Church of the Holy Faith, Inc., v. State Tax Commission**, 34 N.M. 403, 48 P.2d 777, the Court again considered the question of tax exemptions. That case involved a question of exemption as to certain church property which was being used for non-church purposes although the proceeds from such use did go to the church. The Court stated the rule to be that laws and constitutional provisions exempting property from taxation are to be strictly construed. The Court concluded that the use to which the property was being put prevented the constitutional exemptions from being applied, **even though the profits were devoted to religious, educational and charitable purposes.**

It is apparent that the nonprofit character of the owner of the property does not permit the granting of an exemption from ad valorem taxes.

Unless the property is used for educational, religious or charitable purposes under the holding in **Church of the Holy Faith v. State Tax Commission**, supra, it is not exempt from ad valorem taxation.