

Opinion No. 71-54

April 14, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Morris Stagner District Attorney Ninth Judicial District County Courthouse
Clovis, New Mexico

QUESTIONS

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Is a mausoleum within the definition of cemetery and thereby exempted from taxation as provided in Article VIII, Section 3 of the Constitution of the State of New Mexico?

CONCLUSION

Yes.

OPINION

{*77} ANALYSIS

New Mexico Constitution, Article VIII, Section 3 provides in pertinent part:

". . . all cemeteries not used or held for private or corporate profit . . . shall be exempt from taxation."

"Cemetery", as defined for the purposes of the Endowed Care Cemetery Act of 1961, includes burial parks, for earth internments, mausoleums for vault or crypt internments, crematories and columbariums. Section 67-29-3, N.M.S.A., 1953 Comp. It would be reasonable to apply this definition here and conclude that mausoleums are tax exempt structures.

The word "cemetery" has been judicially defined by most courts in general terms. The following are some examples.

"A 'cemetery' is defined as a place where human bodies are buried; a graveyard."
Smallwood v. Midfield Oil Co., Tex. Cv. A., 89 S.W.2d 1086, 1090 (1936).

"A cemetery is a place set apart, either by municipal authority or private enterprise, for the internment of the dead." National Cemetery Ass'n of Missouri v. Benson, 129 S.W.2d 842, 344 Mo. 784, 122 A.L.R. 893 (1939).

"A cemetery is a place set aside for the burial or internment of the dead." *Abraham v. Lakewood Park Cemetery Ass'n*, 196 S.W.2d 278, 355 Mo. 313 (1946).

It is our opinion that a "mausoleum is contained within these definitions, as it is a "place set apart for the internment of the dead" and is also a "place where bodies are buried". Accordingly, the pertinent portions of Article VIII, Section 3 are applicable.

We find a number of cases which have held that mausoleums, being intricate parts of a cemetery, are tax exempt structures. See **Gray v. Craig**, 103 Kan. 100, 172 P. 1004 (1918); **Forresthill Cemetery Co. v. Creath**, 127 Tenn. 686, 157 S.W. 412 (1913); **Washelli Cemetery Ass'n v. King County**, 292 P. 101, 158 W. 599, (1930). In the latter case the court stated its reasoning.

"Nor is the question affected by the fact that a part of the cemetery property consists of large, ornate, and costly structures. These are but places of sepulture for the dead, and are as much a part of the cemetery proper as are the burial lots themselves. They provide only for another form of burial than burial in the ground . . . The fact that the statute may not have used apt terms to describe burial in this manner is of no moment."

It is our opinion that these cases are applicable to the situation here presented, and that mausoleums should be tax exempt structures, provided the cemetery as a whole meets the constitutional requirements for exemption.

By: Oliver E. Payne

Deputy Attorney General