

Opinion No. 72-63

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BY: OPINION OF DAVID L. NORVELL, Attorney General Randolph B. Felker, Assistant Attorney General

TO: Mr. Filberto Ruiz, Jr., Director, New Mexico, Veterans' Service Commission, Post Office Box 2324, Santa Fe, New Mexico 87501

QUESTIONS

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Is an unmarried widow of a veteran who at the time of his death was receiving New Mexico tax exemption benefits, but who was legally separated from the veteran at the time of his death, entitled to the New Mexico Veterans' tax exemption?

CONCLUSION

Yes.

OPINION

{*103} ANALYSIS

Article VIII, Section 5 of the New Mexico Constitution authorizes the Legislature to exempt from taxation certain property of honorably discharged veterans or their widows, providing the veteran meets certain standards such as having served in the armed forces during a period of armed conflict.

Under Section 72-1-13, N.M.S.A., 1953 Comp. (1971 P.S.), the Legislature has enacted the following soldiers' statutory exemption:

"Real and personal property, including the community or joint property of husband and wife, of every soldier shall be exempt from taxation in the sum of two thousand dollars (\$ 2,000). The exemption, pursuant to this section, shall be allowed against the assessed valuation of the property against which the exemption is claimed. Where both the husband and wife are soldiers as defined by this act each shall be entitled to assert the full amount of their respective exemptions. The exemption shall apply to all taxes levied in the year of 1933 and all which may thereafter be levied, but the exemption shall not apply to any property held in trust by any soldier, except to the extent of a legal beneficial interest of such soldier therein. In addition to the exemption said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied."

Section 72-1-11, N.M.S.A., 1953 Comp. (1971 P. S.) defines "soldiers":

"Soldier' shall include every honorably discharged member, of either sex, of the armed forces, who served in the armed forces of the United States on active duty continuously for ninety [90] days at any time during any period in which the military forces were engaged in armed conflict under orders of the President of the United States, or who served in the armed forces of the United States on active duty continuously for ninety [90] days, any part of which occurred during a period in which the military forces were engaged in armed conflict under orders of the President of the United States . . . and Provided, further, that such honorably discharged members of the armed forces shall also include resident unmarried widows of such resident honorably discharged members of the armed forces . . ."

Since it can be seen that the Legislature has chosen to exempt from taxes certain property of soldiers and their resident unmarried widows from taxation, if the woman in question is a "resident unmarried widow" of the deceased soldier, she is entitled to his tax exemption.

Although the Legislature did not define the term "widow", it will not be presumed that the Legislature intended to adopt a construction not in accord with sound reasoning and common sense. **McDonald v. Lampert**, 43 N.M. 27, 32, 85 P.2d 78, 81 (1938). Thus, the word "widow" must be defined in its usual, ordinary and popular sense. **Watson v. Western Casualty & Surety Co.**, 72 N.M. 250, 253, 382 P.2d 723, 725 (1903).

Black's Law Dictionary, (Rev. 4th {104} ed. 1968) defines "widow" as "[a] woman whose husband is dead and who has not remarried." The term "widow" has been defined by various courts as "an unmarried woman whose husband is dead," **Trathen v. United States**, 96 F. Supp. 809, 812 (D.C. Penn. 1951) and as a "woman who has lost her husband by death and who has not remarried." **State v. Petro**, 130 Ohio Op.2d 360, 161 N.E. 2d 428, 429 (1959). It follows from those definitions if a woman is lawfully married to a man who dies, that woman is a widow until she remarries.

This brings us to the final question: Is a legally separated woman still "married" to her estranged spouse? A review of New Mexico statutes indicates that legal separations **do not** dissolve the bonds of marriage. Section 22-7-2, N.M.S.A., 1953 Comp. provides that if spouses have permanently separated, either may institute suit for a division of property or for the disposition of the children without obtaining a dissolution of the bonds of matrimony. Further, Section 57-2-12, N.M.S.A., 1953 Comp. dictates that separation contracts between husband and wife cannot alter their legal relations, except as relating to property and support. It thus appears that legally separated spouses are still married in the eyes of the law.

From this, we feel that a woman who is legally separated from her husband is in fact his "wife" and upon his death, becomes his "widow."

We are aware that tax exemptions are traditionally construed strictly. **J. D. Adams Mfg. Co. v. Storey**, 304 U.S. 307, 58 S. Ct. 913, 82 L. Ed. 1365 (1937). We are also aware that there is a line of decisions denying the status of "widow" to wives who have

deserted their husbands without cause before the deaths of those husbands. See **Williams v. Lawson**, 35 F.2d 346 (5th Cir. 1929); **Young v. Hyman Motors**, 199 S.C. 233, 195 S.E.2d 109 (1942); **Henderson v. Avondale Marine Ways, Inc.**, 204 F.2d 178 (5th Cir. 1953). In addition, it has been stated that the legislative intent for the widows' exemption was to relieve widows of the hardship of paying increased property taxes upon the death of their husbands. See Attorney General Opinion No. 5187 (1949).

Under New Mexico laws, however, we feel that the conclusion is inescapable that legally separated spouses are still husbands and wives, and upon the death of such a husband, his wife becomes his widow. The rules of strict construction against those seeking an exemption do not apply in absence of ambiguity in the words of the statutes. **Lockhart v. Wolden**, 17 Cal.2d 628, 111 P.2d 319 (1941). As Judge L. Hand, in **Kandelin v. Social Security Bd.**, 136 F.2d 327, 328 (2d Cir. 1943) stated:

"A wife is still a wife after she has abandoned her husband, and the argument is unanswerable that she becomes his 'widow' when he dies and is therefore entitled to the award, unless the statute provides otherwise"