

Opinion No. 13-1061

June 14, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Reed Holloman, Tucumcari, New Mexico.

TAXATION.

Property of B. P. O. Elks exempt from taxation, if it is such an association as defined by Section 3, Chapter 51, Laws of 1903.

OPINION

{*231} I have received your letter of the 11th inst. in which you ask whether in my opinion the Elks' home property is subject to taxation, and say that it is used exclusively by the order of Elks and not for profit or gain in any particular.

I have not had this question submitted to me since the adoption of the Constitution which, I think, may seriously affect its consideration. By Section 7 of Article VIII, it is provided that various kinds of property shall be exempt from taxation and in the enumeration therein contained the only clause that could possibly cover property of the Elks is "all property used for educational or charitable purposes." As I understand, the property of the Elks is, to some extent, used for charitable purposes, but it is also used generally for other purposes as well. It might be contended that this constitutional declaration of property exempt from taxation excludes the exemption of any other property in accordance with the rule of **expressio unius exclusio alterius est**, and if this is correct the Elks' property would, I believe, be taxable. There is not, however, any distinct limitation on the power of the legislature to create other exemptions as there is in the next succeeding section with regard to the power to license and tax corporations and corporate property, which might afford some ground for argument that the legislature does have such power. My own opinion is that the legislature may provide for further exemptions.

I believe we have had no legislation, since the state was organized, on this subject, but any territorial statute not inconsistent with the constitution continues in force and is to be judged in the same way that an act of the state legislature would be. Section 3 of Chapter 51 of the Laws of 1903, provides "that all property of such library association and of other associations or corporations not conducted for financial gain, but for the education or social advancement of the members thereof, is hereby exempt from taxation." Is not the order of Elks an association not conducted for financial gain, but for the social advancement of members thereof? If so, this section would seem to exempt its property. I do not overlook the possibility of a contention that there should be applied to this statute the rule of **ejusdem generis** so as to limit "all other associations" to those of like character with the library association which is mentioned; but that is no rigid or

unbending rule and must give way to the common sense view of what the legislature intended, and when it speaks of other associations for the social advancement of members, we must hold that there was an intention to include associations which might be entirely different from a library association. Some years ago I had {*232} occasion to consider the subject of this rule and collected a large number of authorities to show that "other" does not always mean things of the same kind as those specially mentioned.

While there is no state legislation directly on the subject of exemption from taxation, yet attention should be called to Section 6 of Chapter 84 of the Laws of 1913, which declares that "All property, real and personal, in the state shall be subject to taxation, except as in the Constitution and existing laws otherwise provided." This was a legislative intent to leave the taxability of property and exemptions from taxation as heretofore provided by law.