

Opinion No. 16-1734

February 9, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. D. Read, Senorito, New Mexico.

Taxation of improvements on unpatented homesteads.

OPINION

{*304} I have just received your letter of the 3rd instant, which, however, from the post mark on the envelope, appears not to have been mailed until the 7th. You ask me whether buildings, houses and barns on an unperfected homestead are subject to taxation. I am of opinion that they are not since the adoption of the codification of the statutes last year. Section 4018 of the Copiled Laws of 1897 provided that all property not exempt by law should be subject to taxation, and the next section declared that the term "real estate" should include all lands and improvements, and that the term "improvements" should include all buildings, structures, fixtures and fences erected upon or affixed to the land, whether title had been acquired to said land or not. This section has been omitted from the codification, and the legislature declared that all acts and parts of acts of a general and permanent nature not contained in the codification {*305} were repealed. It would seem, therefore, that the general rule would not be applicable that fixtures attached to the soil become a part of the real estate, and it is provided in the Act of 1913, by a section which reappears as Section 5427 of the codification, that lands entered or purchased under any act of Congress shall not be subject to taxation until patent therefor has been issued, and in my opinion this would prevent the taxation of buildings erected on a homestead until the patent has been issued.