

Opinion No. 18-2086

February 20, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Railroads Cannot Be Exempted From Taxation.

OPINION

Replying to your favor of February 19th, wherein you request the opinion of this office as to whether or not Section 5432 of the 1915 Codification, which provides for the exemption from taxation of certain railroads, is in violation of Section 3 of Article VIII of the Constitution, we advise as follows:

Section 3 of Article VIII of the Constitution provides and enumerates certain things which shall be exempted from taxation. Section 5 of the same article further provides that the legislature may exempt from taxation property of each head of a family to the amount of two hundred dollars. These two sections are the only two constitutional provisions relating to exemption from taxation.

The question is: Does an enumeration of exemptions in a constitution limit the power of the legislature to grant other exemptions than those enumerated? In other opinions to your office we have indicated it was the opinion of this office that such an enumeration did constitute a limitation upon the power of the legislature. This view, we think, is sustained by the authorities.

In the case of *City of New Orleans v. The People's Insurance Company*, 27 La. Ann. 519, the Supreme Court of Louisiana said:

"Article 118 of the constitution requires taxation to be equal and uniform, and it specially authorizes the General Assembly to exempt from taxation property actually used for church, school or charitable purposes. This special authority to exempt property used for certain purposes, has been held by this court to carry with it an implied inhibition from exempting from taxation property used for other purposes, that is to say, property not actually used for church, school or charitable purposes."

In the case of *C. & O. Railway Company v. Miller*, 19 W. Va. 408, the Supreme Court of West Virginia held that a law exempting from taxation property not enumerated in the Constitution, violates the provisions of the Constitution, which constitutional provision is as follows:

"Taxation shall be equal and uniform throughout the State; and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by

law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property may be law be exempted from taxation."

In the case of *Le Dux v. City of Hastings*, 38 N. W. 803, the Supreme Court of Minnesota, in passing upon the exact question as to whether or not the enumeration of exemptions in the Constitution was a limitation upon the power of the legislature to grant other or additional exemptions, said:

"The act in question is manifestly unconstitutional, for a reason apparent on its very face, and which goes to the very foundation of the merits of this case. Section 1, Art. 9, of the constitution of the state, provides that all taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized throughout the state. Section 3 of the same article provides that laws shall be passed taxing all moneys, credits, investments in bonds, stocks, stock companies, or otherwise, and also all real and personal property, according to its true value in money, with certain specified exemptions. Equality of burden is therefore the principle of the constitution. There is to be no rule that exempts some property (unless within the specified exemptions) and casts the burden upon the rest. These constitutional provisions render it imperative that all the property of which exemption is not permitted shall be taxed, and preclude any other exemptions than those specified."

This view is also sustained by the following authorities: *Hunsaker et al. v. Wright et al.*, 30 Ill. 146; *City of Tanville v. Auditor of Muskingun County*, 5 Ohio St. 590; *State of Washington on relation of Fred D. Chamberlain et al. v. J. W. Daniel*, 17 Wash. Ill., 49 Pac. 243; *Field v. Commissioners*, 36 Ohio St. 476; *Hogg v. Mackay*, 23 Ore. 339.

In view of the foregoing authorities, it is our opinion the exemptions enumerated in our Constitution are the only exemptions which the legislature has the power or authority to grant. Therefore, the attempted exemption, as set forth in Section 5432 of the 1915 Codification, is violative of our Constitution and is, therefore, void.