

Opinion No. 22-3502

July 3, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Building and Loan Associations Subject to Payment Corporation Franchise Tax.

OPINION

{*165} I have before me letter from Mr. R. H. McCune, Secretary of the Roswell Building & Loan Association, directed to your Mr. White, regarding the liability of building and loan associations incorporated in this state for the payment of the corporation franchise tax authorized by the provisions of Chapter 100, Laws 1919. Accompanying the letter is a file of correspondence including an inquiry from your office dated September 5, 1919, and a reply thereto dated November 29, 1919, written by former Assistant Attorney General N. D. Meyer.

In the opinion mentioned, Mr. Meyer construed the provisions of Chapter 100, Laws 1919, in so far as they may be held to apply to the payment of the corporation franchise tax by building and loan associations, and held that such corporations are subject to the payment of the tax.

Your correspondent, in his letter of June 30th, suggests that Section 506, Chapter 133, Laws 1921, exempts building and loan associations from the payment of all taxes excepting those provided for in that act.

The last mentioned section provides for the taxation of the property of building and loan associations, and then provides that:

"Neither the association nor the shareholders therein shall be liable to other taxation upon said shares of stock or the mortgages owned by said association upon real estate listed for taxation by the owners thereof."

There is nothing in this section which, by any stretch of imagination could be construed to exempt from payment of the corporation franchise tax, building and loan associations incorporated in New Mexico.

The corporation franchise tax authorized by Chapter 100, Laws 1919, is in the nature of a license imposed by the state for the privilege of being permitted to do business therein. It does not partake of the nature of a property tax, and courts have universally held the corporation franchise tax to be a privilege tax and not a property tax.

I am satisfied that Mr. Meyer's opinion regarding the liability of the building and loan associations for the payment of the corporation franchise tax was correct at the time it was rendered, and that there have been no changes in the law regarding this matter since the rendition of that opinion. Therefore, building and loan associations should be held subject to the payment of this tax.

I am returning herewith Mr. McCune's letter and the papers which accompanied it.