

Opinion No. 23-3732

August 18, 1923

BY: MILTON J. HELMICK, Attorney General

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

A Concern Engaged In Insurance and Real Estate Business, Although Called A Mortgage Loan Company, Which Is Assessed by the Assessor Shall Not Be Assessed by the Tax Commissioner Under the Banking Law.

OPINION

{*90} This inquiry arises upon the authority of the Tax Commission to assess the Western Mortgage Company of Albuquerque, by valuing its shares of stock in the method provided in Section 504 of Chapter 133 of the Laws of 1921 as amended by Chapter 80 of the Laws of 1923. This section is the familiar one governing the assessment of banks, Trust and Mortgage Loan Companies in this state.

Mr. George Roslington of the Western Mortgage Company of Albuquerque, has appeared before the Tax Commission contending that the company is now assessed in Bernalillo County by the Assessor in the same manner that other non-banking corporations are assessed, and that such company is not subject to the provisions of the section mentioned. He states two main reasons for his contention: (1) That the Western Mortgage Company is a corporation organized under the laws of Arizona and that Section 504 expressly refers to Banks, Trust and Mortgage Loan Companies organized under the laws of this state and the United States statutes, and (2) that the company is not, in fact, a trust or mortgage loan company or a bank.

Mr. Roslington, on behalf of the company has made a showing to the Tax Commission that although the name of his Company is somewhat misleading it is not, in fact, a Trust or Mortgage Loan Company but is a Company which is doing principally an insurance, real estate and loan brokerage business, the same as many other agencies in the city of Albuquerque. He states that the company does not make mortgage loans, although several years ago, when the company first qualified to do business in this state, two loans were actually made. He states further that the real estate and personal property belonging to the Company is assessed in Bernalillo County and that the company pays the usual insurance premium tax, franchise tax, etc.

The Tax Commission appears to be satisfied with the showing made by Mr. Roslington that the Company is not, in fact a Trust or Mortgage Loan Company. If this fact is determined by the Tax Commission, there is no difficulty in the situation and it would be clear that the company is not subject to the method of taxation provided by section 504.

If the Tax Commission is satisfied that this concern is not in fact a Trust or Mortgage Loan Company, then it should not attempt to assess it under the method provided in section 504, but should leave the matter of assessment to the Assessor of Bernalillo County. As I understand, the company does not claim any exemption from taxation but merely insists that it should be assessed by the assessor in the usual method applied to business corporations and not by the Tax Commission under the banking act. I can see no objection {*91} to this if the State Tax Commission is satisfied that the company is of the nature represented.

I have not considered the contention that section 504 would not apply in any event because the company is not organized under the laws of New Mexico, because if the company is in fact not a Trust or Mortgage Loan Company the section cannot apply.