

Opinion No. 26-3895

June 17, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. Thor W. Kolle, Excise Tax Department, Santa Fe, New Mexico.

This Office is in receipt of your letter requesting an opinion as to whether or not Greek letter fraternity houses when owned by a fraternity or sorority are exempt from taxation.

§ 5430, Codification of 1915, contains the following provision:

"The following property shall be exempt from taxation: * * * the grounds, buildings, books, papers, and apparatus of literary, scientific, benevolent, agricultural, and religious institutions and societies, when the property of said institutions and societies shall be devoted exclusively to the appropriate objects of such institutions, and not leased or rented or otherwise used with a view to pecuniary profit."

The general rule as laid down in 26 Ruling Case Law, page 323, is as follows:

"Ordinarily, a college fraternity house in which the members of the society live and have their meals is not exempt, even if some literary and educational work is done therein. When, however, a statute specifically exempts a college society house such a house is exempt even if the legal title is in a corporation and not in the society."

It will be noted from a reading of our statute that it does not specifically exempt college fraternities, and the cases which have been decided wherein statutes similar to ours have been construed have held that college fraternities do not come under the provision exempting literary and scientific societies. *People ex rel. Delta Cappa Epsilon v. Lawler*, 77 N. Y. Supp. 840; *Phi Beta Epsilon v. Boston*, 65 N. E. 824; *Orono v. Sigma Alpha Epsilon*, 74 Atl. 19; and *Orono v. Cappa Sigma*, 80 Atl. 831.

Our statute was passed February 26, 1891, and at that time there were few, if any, college fraternities in New Mexico; had such fraternities been in existence at that time the Legislature might have made provision for exempting them from taxation, because they are certainly entitled to consideration, and some states have so recognized this fact and allowed them the exemption on an equality with educational, literary and scientific institutions and societies. Under our statute, however, and the adjudicated cases, it cannot be held that they are exempt from taxation, and, in my opinion, the only way to procure such an exemption would be through the Legislature of New Mexico.