

**Opinion No. [29-117]**

July 23, 1929

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Clara A. Lisetor-Lane, Santa Fe, New Mexico.

TAXATION -- Exemptions -- Art. VIII. Sec. 3, Const.; Art. IV. Sec. 32, Const.

**OPINION**

This will acknowledge receipt of yours of the 22nd inst. relative to your plans for a ranch resort and training school on the Sebastian Martin Grant.

You ask for an opinion as to the validity and the legality of tax exemption, both, as I understand it, with reference to taxes, interest and penalties now delinquent and therefore a lien on the property, and taxes to accrue.

As you have been advised by Mr. Joerns of the State Tax Commission, there is an apparent conflict or at least a difference in wording between the constitutional and statutory provisions relative to exemptions. As I understand you to be familiar with the wording of section 3, article VIII of the Constitution of the State of New Mexico, and also the wording of section 5430 of the Codification of 1915, it will not be necessary to quote either. As affecting the question of exemptions it is sufficient to say that, by the Constitution, "all property used for educational or charitable purposes" is exempt from taxation. Of course, if there is a conflict between the Constitution and the statute the latter must give way to the constitutional provision. The difficulty arises in interpreting the words, "property used for educational purposes". From your letter I assume, however, that the property has not yet been devoted to educational purposes and that such use of it is yet in prospect. Consequently it does not seem advisable to render an opinion on this as a hypothetical case. This may become necessary when your project is in actual operation.

The question which seems of more pressing present concern has to do with the taxes, interest and penalties aggregating some \$ 10,000.00 now against the property and your argument for the abatement of such charges on the ground that the property is to be at some future day used for educational purposes. The answering of this question does not involve any difficulty. Article IV, section 32, of the Constitution of the State of New Mexico, reads as follows:

"No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

From the section just quoted it will be seen that these taxes, being an obligation or liability owing to the state, cannot be remitted or released even by the Legislature. It was so held by the supreme court of this state in the case, State v. Montoya. It is within the power of the Legislature to remove the lien for taxes and the Legislature has discharged liens for taxes which accrued prior to 1910. You do not say for what years these taxes now against this property were levied and assessed. At any rate they were not assessed property used for educational purposes.

Referring to your request that I secure also the opinion of the Chief Justice, permit me to explain that it would be improper to request the Chief Justice to render in advance an opinion on a matter which may come before the supreme court and inasmuch as I am confident he would not care to render such an opinion now, I have not asked him to do so.