

Opinion No. 34-714

January 17, 1934

BY: E. K. NEUMANN, Attorney General

TO: Honorable Byron O. Beall, Chief Tax Commission, Santa Fe, New Mexico.

{*106} Your letter of January 16th encloses letter from Esteban Griego, County Assessor at Las Vegas, and also letter from Mr. C. W. G. Ward, Attorney at Law, Las Vegas. These letters relate to the question as to whether notes and mortgages of Banks and Mutual Building and Loan Associations are taxable under Chapter 107, Laws of 1933.

{*107} Section 1 of said Chapter 107, provides that all property, real, personal and intangible shall be subject to taxation, except as in the constitution and existing law otherwise provided. Section 20 of said Chapter, provides that all property, real, personal and intangible not otherwise assessed and valued for purposes of taxation shall be declared listed, assessed and taxed in the county where it is situated * * *."

Section 13 of Chapter 147 of the Laws of 1931, read as follows:

"All Mutual Associations shall be listed and assessed for taxation in the following manner: Before the first day of March in each year, the Secretary of every Building and Loan Association shall file with the County Clerk of the County in which the principal place of business of said Association is located, a duplicate statement verified by the Secretary, showing the amount paid into such Association by shareholders upon shares of stock issued by it up to the first day of January preceding, and then outstanding, and also the amount loaned up to said date to shareholders and secured by mortgages upon real estate listed for taxation or secured by the stock of such Association. The County Clerk shall deliver the statement to the Assessor who shall proceed to assess said Association for taxation with the amount shown to have been paid into said Association up to said first day of January upon outstanding shares of stock, less the amount shown by the statement to have been loaned to shareholders upon such mortgage security so listed for taxation, and upon shares of stock of said Association, and neither the Association or 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. Provided, that this section shall not apply to any case upon which final judgment for taxes has already been rendered."

Attention is directed to that part of the above quoted section which is in this language, "neither the Association or 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."

Your attention is also directed to Section 141-105 of the New Mexico Statutes Annotated, 1929 Compilation, which is:

"Banks -- Exemptions from tax. Corporations doing banking business in this state, whether organized under the laws of the United States or under the laws of the State of New Mexico, shall be subject to no other taxation than that provided by law, except upon real property."

Under this provision Banking Corporations are only subject to taxation as is provided by law, with the exception, of course, upon real property and that provision of law relating to banking property is found in Section 141-502 of the 1929 Compilation, which is applicable only to the shares of the capital stock of Banks and also Trust and Mortgage Loan Companies.

Section 141-105, to which we have referred, has always been considered as an exemption statute and we see no reason to depart from that construction at this time.

Chapter 107 of the Laws of 1933, contains no provision repealing all laws and parts of laws in conflict therewith, and in view of the provision which provides that all property, real, personal and intangible shall be taxed except as in the constitution and existing law otherwise provided, it is our belief that notes and mortgages of Banks and Mutual Building and Loan Associations are not proper subjects of taxation.

From reading the sections above outlined, it is at once apparent that other provisions relative to such taxation question are now carried upon our statutes as existing law.

May we suggest that this letter be mimeographed and forwarded to the various County Assessors for their information and guidance.

We herewith return both Mr. {*108} Griego's and Mr. Ward's letters for your files.

By: FRANK H. PATTON,

Asst. Attorney General