

Opinion No. 37-1618

April 27, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. John D. Bingaman Commissioner of Revenue Santa Fe, New Mexico

{*85} You have orally requested an opinion as to whether a legacy to a charitable or educational institution is exempt from inheritance tax by statute or by reason of the constitutional exemption contained in Article VIII, Section 3 of the Constitution.

Section 141-1102 provides that legacies to "any corporation, voluntary association or society" shall be liable to a tax of five per cent. There is no exemption provided in favor of charitable or educational institutions under our statutes.

In my opinion, the constitutional exemption does not apply to legacies in favor of such charitable or educational institutions. Even legacies to the United States Government, the State, or its agencies or subdivisions are subject to inheritance tax unless expressly exempt by statute. 61 C. J. 1680. Yet all property of the State and Government is exempt from taxation.

Directly on the point in question, Corpus Juris says, 61 C. J. 1678:

"A legacy or other transfer from a decedent to a charitable, religious, or educational institution or for a charitable, religious, or educational use or purpose is exempt from an inheritance or succession tax when, and only when, it is so provided by a statute in force at the time, * * * a legacy to a charitable, educational, or religious institution is not exempt from taxation merely because the property of the institution is exempt from general taxes; * * *."

By: A. M. FERNANDEZ,

Asst. Atty. Gen.