

Opinion No. 37-1659

June 2, 1937

BY: FRANK H. PATTON, Attorney General

TO: State Corporation Commission Franchise Tax Department Santa Fe, New Mexico.
Attention: Mr. Casados and Miss Bell

{*108} This is to acknowledge receipt of your letter of May 26, 1937, with attached correspondence and records of your office. In this letter you request an opinion as to the liability of the Western Underwriters Corporation for franchise taxes. It is the contention of this company that it is not liable for such taxes because it is not operating for profit within the meaning of Section 1, Chapter 116, Laws of 1935.

It appears that this corporation is a holding company and, according to its letter of explanation, was organized for the sole purpose of financing Western American Life Insurance Company; that all funds less operating costs are used to finance the life insurance company above mentioned and any profits which may accrue stockholders in the form of dividends will eventually come through that company and not Western Underwriters Corporation. The term "domestic corporation for profit" is defined in Section 1 of the act as follows:

"The term 'domestic corporation for profit' means any corporation, joint stock company or association organized under the laws of the State of New Mexico, except state banks, insurance companies, and those corporations **organized and conducted for religious, charitable, educational or social purposes, and not for profit.**"

The liability of corporations which are not ostensibly operating for profit, such as cooperative associations, was extensively considered in Opinion No. 1566 (March 22, 1937). Relying upon the cases of State vs. Sessions (Kans.), 147 Pac. 789, and Peninsula Light Company vs. Tax Commission of Washington, 56 P. (2d) 720, we held that such corporations were liable for the payment of the franchise tax. These cases are the nearest in point that we have been able to find upon this general subject. In our opinion they announce the doctrine that corporations are taxable under acts similar to ours unless they are created for a benevolent or eleemosynary purpose. Also the wording of the definition above quoted leads us to believe that only corporations organized and conducted for religious, charitable, educational or social purposes, as distinguished from business corporations, are exempt from the act.

A holding company performs an essential business function. It can and often is operated for a profit. {*109} In addition to this we are informed that you have been uniformly assessing this tax against all holding companies. Administrative interpretation of an act is entitled to some weight. We are therefore of the opinion that Western Underwriters Corporation is liable for the franchise tax upon the principles above stated and upon those announced in our opinion of March 22, 1937.

Trusting this answers your question, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.