

Opinion No. 38-1856

January 5, 1938

BY: FRANK H. PATTON, Attorney General,

TO: Mr. Benj. D. Luchini Chief Tax Commissioner Santa Fe, New Mexico

{*206} Your letter of January 4th requests an opinion with respect to Chapter 44, Section 1, Laws of 1933, amending Section 141-1403, 1929 Code. The amendment provides, "that such exemption from taxation shall not be permitted to be claimed by nor allowed to any soldier who has not, prior to January 1, 1934, acquired residence in the State of New Mexico".

Your first question is whether the limitation provided in this amendment applies to a resident of the state who enlisted from New Mexico in the World War and then changed his residence to another state in 1928, but returned and re-established residence again in New Mexico after January 1, 1934.

{*207} This exact question under the same facts was answered by this office under date of April 1, 1936, in Opinion No. 1341, addressed to Mr. Compton, District Attorney, and it was there held that the limitation applied, and that under such facts the ex-service man was not entitled to exemption. It was pointed out in that letter, however, that there was room for controversy, but since that time the Legislature has met and has made no change. Our courts have not had occasion to pass upon the intention of the Legislature as expressed by the above quoted language.

Your second question is whether the limitation applies to a soldier who acquired residence in 1925, abandoned it after 1934, and returned and re-established residence in 1937. There is no difference in principle, and if the soldier is not entitled to exemption under the facts stated in your first question, and as above stated this office has ruled that he is not, then, of course, he is not entitled to the exemption under the facts stated by you.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.