

## Opinion No. 41-3842

July 22, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*79} This will acknowledge receipt of your letter of July 19, 1941, together with the letter from the Farm Credit Administration.

You request our opinion as to whether or not the various district {\*80} court clerks should charge the Farm Credit Administration and the several corporations and associations under its supervision and control the \$ 1.25 fee or tax levied by Chapter 191 of the New Mexico Session Laws of 1941 on all civil actions filed in their office.

The Federal Land Bank of Wichita, Federal Intermediate Credit Bank of Wichita, Production Credit Corporation of Wichita, Wichita Bank for Cooperatives (comprising the Farm Credit Administration of Wichita), Federal Farm Mortgage Corporation and the several National Farm Loan Associations and Production Credit. Associations throughout the Ninth District all operate under the supervision and control of the Farm Credit Administration and are each and all corporations created and organized under Acts of Congress as federal agencies and instrumentalities for the purpose of providing credit for agricultural purposes at low and uniform interest rates.

There is no question in my mind but what the charge imposed by Chapter 191, New Mexico Session Laws of 1941, is an excise tax levied for the purpose of creating a revenue to the state with which to pay for the compiling, annotating and publishing by the Bobbs-Merrill Company, a new compilation of the New Mexico Statutes, as distinguished from a charge or compensation for services rendered by state officers; that the tax is upon the act of filing a civil action and that it is a direct charge against the person, firm or corporation which institutes the suit.

Each and every one of the corporations and associations operating under the supervision and control of the Farm Credit Administration are agencies and instrumentalities of the United States Government. This conclusion on my part is based on the fact that the Supreme Court of the United States has either declared or the Act of Congress under which they have been created so declared them to be. See *Smith vs. Kansas City Title and Trust Company*, 255 U.S. 180; *Federal Land Bank of New Orleans vs. Crosland*, 261 U.S. 374; *Federal Land Bank of Columbia vs. Gaines*, 290 U.S. 247; *Federal Land Bank of St. Louis vs. Priddy*, 295 U.S. 329; *Knox National Farm Loan Association and the Federal Land Bank of Louisville vs. Phillips*, 300 U.S. 194.

Since the early case of *McCulloch vs. Maryland*, 4 Wheat. 316, 4 L. Ed. 579 (1819), down to the present time, the Supreme Court of the United States has uniformly held that federal agencies and instrumentalities, created or empowered under acts of

Congress for the purpose of carrying on governmental functions, are immune from taxation by the several states and their political subdivisions under an implied immunity derived from the Constitution.

The Supreme Court of the United States in the *Crosland* case, *supra*, held to be unconstitutional and void when applied to mortgages given to the Federal Land Bank of New Orleans, a statute of the State of Alabama imposing a mortgage registration tax upon all mortgages offered and filed for record in the proper office.

Again in the case of *Pittman vs. Home Owners Loan Corporation of Washington, D. C.*, 308 U.S. 21, the Supreme Court of the United States held to be unconstitutional and void when applied to mortgages given to the Home Owners Loan Corporation, a statute of the State of Maryland imposing a mortgage registration tax upon all mortgages offered and filed for record in the state.

To my mind, in principle there is no difference whatever between a mortgage registration tax and a tax imposed for the privilege of filing a civil action, such as is provided by the New Mexico statute in question. Therefore, in view of the foregoing review and {81} authority, I conclude that as applied to actions filed by any of the corporations and associations above named, said Chapter 191 of the New Mexico Session Laws of 1941 is unconstitutional and void and the tax thereby imposed cannot legally be levied or collected in connection with such cases.

By HOWARD F. HOUK,

Asst. Atty. General