

Opinion No. 45-4694

April 18, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Harrold Sellers Chief Tax Commissioner Tax Commission Santa Fe, New Mexico. Attention: Ira L. Ludwick, Chief Clerk

{*50} I have your request for an opinion concerning the status of property owned by a municipality but not used or held for municipal purposes insofar as taxation is concerned.

Section 3 of Article 8 of the Constitution of New Mexico provides in part as follows:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property * * *"

While it is noted that in the cases of Church of Holy Faith vs. State Tax Commission 39 N.M. 403, 48 Pac. 2d 777, and Trustees of Protestant Episcopal Church vs. State Tax Commission 39 N.M. 419, 48 Pac. 2d 786, our Supreme Court held that insofar as the exemption for church purposes is concerned, the property must actually be used for church purposes before an exemption may be allowed, even though the Constitution does not at first glance appear to make the exemption dependent upon use. However, the case of State vs. Locke 29 N.M. 148, 219 Pac. 790, 30 A. L. R. 407 held that the exemption granted to the property of the United States is perhaps compulsory; that to the state, all counties, towns, cities, and school districts arises from public policy, which repudiates, as being utterly futile, the theory of the state taxing its own property in order to produce funds with which to operate its own affairs.

{*51} In view of this language of our Supreme Court, it is my opinion that any property owned by a city or town is not subject to taxation so long as the actual title is held by such city or town, regardless of the use to which such property is put.

You have called my attention to the fact that certain property owned by the city of Santa Fe has been assessed and sold for taxes and the deed is held by the State Tax Commission. In view of the foregoing opinion, it is my further opinion that under the provisions of Section 76-729 of the New Mexico 1941 Compilation the State Tax Commission should issue a quit claim deed to the city of Santa Fe for all property which has been erroneously deeded to the state.

By HARRY L. BIGBEE,

Asst. Atty. General