

Opinion No. 46-4899

May 9, 1946

BY: C. C. McCULLOH, Attorney General

TO: Don R. Casados, Commissioner State Corporation Commission Santa Fe, New Mexico

{*226} We are in receipt of your letter of May 6, 1946, in which you ask our opinion as to whether a nonprofit domestic corporation in this state may legally hold title to real estate donated to it when such real estate is to be held as an investment. I understand the corporation involved is one organized to operate St. Michael's College.

Section 54-1308 of the 1941 Compilation provides in part:

{*227} "Such corporation shall have power * * * to take such real and personal property as is necessary or proper for the furtherance of its objects and not in excess of the amount limited by law, by purchase, gift, devise or bequest, and use or occupy the same."

The corporation involved is a non-profit organization, organized to educate young men throughout the state through the operation of a school. As our law does not limit the amount of property to be held by such corporation, our question is whether property held as an investment is necessary or proper for the furtherance of the objects of this corporation. Simply stated, the question is whether an educational, charitable or religious non-profit corporation may be endowed in this state.

A school such as St. Michael's operates largely through the charitable donations it receives. As the limitation of the statute set out above applies to personal property as well as real, such a corporation would be required to expend the donations made to it when received, if it could not hold or invest such donations. Its operation would be greatly hampered, if it could operate at all. Such a result would be absurd. The Legislature recognized that such corporations would receive donations to carry out its purposes, since it authorized them to receive gifts, devises and bequests. It is inconceivable that the Legislature intended to require such a corporation to immediately expend such donations. Certainly a gift held as an investment, the income to be used to operate the school, is properly held in furtherance of its objects. Any other result would prohibit the endowment of educational, charitable or religious corporations, which is certainly a proper method of carrying out the objects of such a corporation.

While the Supreme Court of New Mexico has never directly passed upon this question, it has recognized that a non-profit charitable, religious or educational corporation might hold property as an investment. In the case of Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, 48 Pac. 2d 777, the question before the Court was whether property owned by a church as an investment was exempt from taxation. The Court

held the exemption applied only to property used for church purposes so that it necessarily recognized that a church could hold property for income purposes.

Cases from other states are of little value as they vary greatly, depending upon the statute involved. See, however, *Middlebury College v. Power Commission*, 143 Atl. 384, 101 Vt. 325; *Stearns v. Newport Hospital*, 27 R. I. 309, 62 Atl. 132; *Reynolds v. St. Johns*, 131 So. 186, 171 La. 395.

In view of the foregoing, it is my opinion that a non-profit corporation organized for such a purpose as the operation of a school may hold real estate as an investment.

By ROBERT W. WARD,

Asst. Atty. General