

Opinion No. 53-5740

April 22, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. O. Walton Assistant District Attorney Hobbs, New Mexico

{*141} In your letter dated April 17, 1953 you refer to previous correspondence in our file and request an opinion concerning a question of taxability for ad valorem taxes of the Hobbs Country Club. Article 8, Section 3 of the Constitution exempts all property used for educational or charitable purposes from ad valorem taxes and the Country Club feels that it is entitled to tax exemption by virtue of the constitutional language.

From information at hand, it appears that the Hobbs Country Club was organized as a non-profit association under § 54-1301 of the 1941 Compilation, which authorizes the organization of debating, literary, scientific, industrial, benevolent, acequias or mutual benefit associations.

This section of the Constitution has been before the Supreme Court on several occasions. In Albuquerque Alumnae Ass'n. of Kappa Kappa Gamma Fraternity v. Tierney, 37 N.M. 156, 20 P. 2d 267, the record discloses that the Sorority was organized under the provisions of § 54-1306 relating to religious, benevolent, charitable, scientific, literary, etc. associations and that the property involved was used as a home for non-resident members and therefore was very beneficial to the University in obviating the necessity of providing additional dormitory space. It was further disclosed that the Sorority House was used by the students and members for study, recreation and social purposes and for carrying out the purposes for which the organization was formed. In this case, however, the court held that the purpose for which the Sorority was organized is not the determining factor, but it is the **use** made of the property which is controlling, and in the foregoing case the court held that the property was not primarily used for educational purposes and, therefore, was not exempt from taxation.

It seems that the primary use of the property governs, although on rehearing in the Kappa case the court stated that the record disclosed no use which should be deemed educational within the meaning of the Constitution. The implication remains, however, that use as contemplated in the Constitution must still be primary or dominant for educational or charitable purposes.

Particularly is this true in view of the strict construction of this section of the Constitution placed upon the same by the court in {*142} Church of the Holy Faith v. State Tax Commission, 39 N.M. 403, 48 P. 2d 777, where it was held that income producing property of a church is not exempt although the proceeds therefrom are used for religious purposes.

In Albuquerque Lodge, No. 461, B.P.O.E. v. Tierney, 39 N.M. 135, 42 P. 2d 206, the court justified the exemption of Elks Lodge property on the basis that the primary use was for charitable purposes although the lodge had rooms in the building which it rented for profit and therefore the use for charitable purposes was not exclusive.

From the information furnished to us, it is apparent that the Club, as such, does not engage in any educational program of its own although the swimming pool and golf course are made available to others for the purpose of giving instruction in swimming and golf under certain conditions. Neither does the Club conduct a charitable program or use the property primarily for charitable purposes merely because its dining room facilities are made available at reasonable prices to civic groups or its rooms allowed to be used for community meetings. The fact that the Club is a non-profit organization and at times may operate at a financial loss is not sufficient to bring it within the terms of the constitutional exemption.

It is apparent that primarily it is used for social and recreational purposes to enhance the mutual happiness and enjoyment of its members and guests, and we, therefore, conclude that this property is not exempt from taxation and should be placed upon the tax rolls the same as any other taxable property.

Trusting this satisfactorily answers your inquiry,

By: C. C. McCulloh

Assist. Attorney General