

Opinion No. 55-6183

June 7, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

You forwarded to this office a request for an opinion from W. H. Davenport, Tax Assessor, Dona Ana County, upon two questions, the first of which deals with whether or not property owned by a School District is exempt from taxation if the land is not presently being used for school purposes. The second question deals with whether state owned land at the New Mexico A. & M. College is exempt from taxation if some of the land is leased to individuals engaged in private enterprise.

The constitutional provision exempting property of School Districts, from taxation, is Article VIII, Section 3 of the New Mexico Constitution. Our Supreme Court in construing this section of the Constitution stated as follows in the case of **Church of the Holy Faith vs. State Tax Commission**, 39 N.M. 403:

"The constitutional provision before us reads: 'The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations * * * shall be exempt from taxation'.

"Here ownership seems plainly the sole test. Elsewhere in the section 'all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit * * * shall be exempt from taxation.' Here use seems to be the sole test.
* * *"

As was stated elsewhere in the same opinion, the reasoning behind this rule is that for a State to tax its own property would simply be taking money out of one pocket and putting it in another, and of course, the same reasoning would apply to property held by School Districts.

Since our Supreme Court has stated directly that ownership of the property is the test in determining whether or not the exemption applies to property held by the State or School District, it goes without saying that our opinion to you is the same. Therefore, you should advise Mr. Davenport that since the same reasoning applies with equal force to both questions propounded by him, that taxes being specifically exempted on the property held by the School District and the New Mexico A. & M. College, he may not assess this property for taxation.

By: Jack A. Smith

Assistant Attorney General