

## Opinion No. 57-195

August 7, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

**TO:** Manuel A. Armijo, Director, New Mexico Veterans' Service Commission, P. O. Box 1723, Santa Fe, New Mexico

### QUESTION

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"1. Is a veteran of the Spanish American War, or his unmarried widow, entitled to Tax Exemption Benefits? If entitled, what should the requirement be as to residence before this Commission may issue a Certificate of Eligibility.

2. Is a veteran of the New Mexico National Guard who served in the Punitive Expedition into Old Mexico in 1916, or his unmarried widow entitled to the Veterans' Tax Exemption Benefit. If entitled, what should the requirement be as to residence before this Commission may issue a Certificate of Eligibility."

#### CONCLUSIONS

1. Yes.

2. Yes.

### OPINION

#### ANALYSIS

Questions 1 and 2. The pertinent statute is Section 1, Chapter 169, Laws of 1957, which reads, in part, as follows:

"'Soldier' shall include every honorable discharge member, of either sex, of the armed forces, who served in the armed forces of the United States for ninety days at any time during any period in which the military forces are engaged in armed conflict under orders of the president of the United States, and shall include persons of either sex as such honorably discharged members of the armed forces. Provided, however, that world war I veterans shall have become residents of the state prior to January 1, 1934; that world war II veterans shall have become residents of the state prior to January 1, 1947; and Korean conflict veterans shall have been residents of the state prior to January 1, 1955; . . ."

We believe that it cannot be doubted that the Spanish- American War and the Punitive Expedition into Old Mexico in 1916 come within the term "armed conflict under orders of the president". Therefore, veterans and unmarried widows of veterans of the Spanish- American War are entitled to the so-called veterans' tax exemption. This would be true of the veterans and unmarried widows of veterans of the New Mexico National Guard Unit who served with the Punitive Expedition into Old Mexico in 1916.

The critical question is the time requirement for residency for these two groups. It is to be noted that the 1957 law, above quoted, fixed cutoff dates which set the time within which residency had to be acquired for certain specified groups of veterans. When this exemption was first enacted, there was no date within which residency had to be acquired. Chapter 130, Laws of 1923.

Chapter 44, Laws of 1933, provided that the veterans' exemption could only be secured by those who had acquired their residency prior to January 1, 1934. In *Flaska v. State*, 51 N.M. 13, the Supreme Court held that soldiers of all wars who otherwise qualified had only to secure residency prior to January 1, 1934 in order to secure this exemption. This case prompted Chapter 79, Laws of 1947, which set the critical date for acquisition of residency at January 1, 1947. The 1947 amendment also provided that World War I veterans had to have secured residency prior to January 1, 1934, unless they also served in World War II.

The amendments to the veterans' tax exemption of 1951 and 1953 do not concern us.