

Opinion No. 57-325

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BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Victor C. Breen, District Attorney, Tenth Judicial District, Tucumcari, New
Mexico

QUESTION

FACTS

A nonprofit association has been formed for the purpose of owning and operating a television transmission system to rebroadcast signals from KGNC-TV, Amarillo, Texas. The signals rebroadcast are available to all citizens of Tucumcari and surrounding areas who wish and are prepared to receive them. No charge is made by the association, but voluntary donations are solicited on its behalf as the association's sole source of income. It is intended that the operating expenses of the station are to be paid from such donations.

QUESTION

Does a nonprofit association, as is above described, have tax exempt status under Article VIII, § 3 of the New Mexico Constitution, on the ground the programs rebroadcasted are educational?

CONCLUSION

No.

OPINION

ANALYSIS

Your inquiry includes the statement by the association's counsel "that broadcasts made by the translator station are educational" followed by "although it might be well submitted that any program, even though intended primarily for entertainment of the receiver would constitute an educational program in the broader sense of that word".

This office cannot accept this premise as coming within the purview of Article VIII, § 3 of the Constitution. If we did, it might as well be held that inasmuch as all human experience is educational, all nonprofit organizations of any kind or nature whatsoever are tax exempt.

This office takes the position that the customary television programs of a commercial television station, whether broadcast or rebroadcast, are primarily for entertainment and that only primarily educational procedures are intended in Article VIII, § 3, insofar as it pertains to this class of tax exemptions.

This opinion is necessarily predicated upon a given state of facts. It does not necessarily apply to similarly circumstanced organizations that do, indeed, offer a primarily educational program.