

Opinion No. 57-86

May 2, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Jack Love, Assistant District Attorney, Fifth Judicial District, Lovington, New Mexico

QUESTIONS

QUESTIONS

Is the real estate and personal property of the Woman's Civic Club of Hobbs, New Mexico tax exempt under the provisions of Article 8, Section 3, Constitution of the State of New Mexico?

CONCLUSION

Yes, for the property actually used for educational and charitable purposes, property not so used, is taxable.

OPINION

ANALYSIS

The provisions of Article 8, Section 3, Constitution of the State of New Mexico insofar as pertinent to this inquiry are as follows:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation."

The purpose of the General Federation of Woman's Clubs with which the Hobbs Club is affiliated is as follows:

"The purpose of the General Federation of Woman's Clubs, as defined in the Charter granted by the United States Government in 1901, is: 'To unite the women's clubs and like organizations throughout the world for the purpose of mutual benefit, and for the promotion of their common interest in education, philanthropy, public welfare, moral values, civics and fine arts.'"

The major programs of the Federation of Woman's Clubs is set forth as follows:

"Educational program to stimulate interest in all phases of education among GFWC members and to suggest constructive action which will help in meeting the educational needs of today. Objectives include promoting adult education, increased financial support for public schools, library extension, vocational and personal guidance services, and cooperation with UNESCO projects.

"National defense program to enlist the active participation of clubwomen in volunteer state and community Civil Defense activities; stimulate interest in consumer problems, especially inflation and means of combating it: encourage the cooperation of clubwomen with housing authorities in defense areas where housing shortages are acute; recruit women for the armed services, nurses' training, and Red Cross volunteer services; stimulate purchase of U.S. Defense Bonds.

"International relations program to stimulate interest and understanding of world problems among the GFWC membership, to interpret our country's foreign policy, to build active support for the United Nations, and to participate in the "Truth about America Campaign."

"Public affairs program to develop interest and leadership in public affairs, with special emphasis on training in citizenship responsibility.

"International good-will and rehabilitation program which includes correspondence with women abroad, rehabilitation projects, promoting exchange of persons and educational material between the United States and other nations, and extending hospitality to visitors and students from abroad.

"Scholarship program to increase the number of scholarships provided by State, District, and City Federations and local clubs for both foreign and United States students.

"Welfare program to promote the establishment of adequate child health and welfare services, local health units, mental health facilities, extended opportunities for older people, and volunteer service for hospitalized veterans.

"Youth conservation program to help meet the needs of young people in the fields of health, education recreation, employment, participation in community planning and family life. A special campaign is being conducted to stop narcotic addiction among young people by working for city ordinances quarantining addicts in suitable institutions and for state and national legislation requiring minimum sentences for convicted peddlers.

"Fine arts program to foster interest in music, literature and art as essential to gracious family living, a cultured community, and better understanding of the culture of other countries."

You have stated in your letter requesting this opinion that we should assume that the Hobbs Club carries on its activities substantially in accord with the purposes and activities stated in the foregoing quotations. We wish to state that this opinion does, in fact, rest upon these assumptions, as we have made no independent survey or investigation of the situation. This opinion is also based on the assumption that the Club's property is used in furtherance of such purposes.

We now proceed to an analysis of the authorities which have dealt with the application of Article 8, Section 3, to the property of certain institutions insofar as the charitable or educational provision is concerned.

Some insight is gained from the case of **State vs. Locke**, 29 N.M. 148, 219 P. 790, in which it was held that all exemptions from taxation proceed upon public policy, but the public policy involved is not always the same. In the case of the exemption of the educational or charitable institutions, such public policy proceeds upon the theory of the public good accomplished by them and of the peculiar benefits derived by the public from the conduct of such institutions.

Temple Lodge No. 6, A.F. & A. M., vs. Tierney, 37 N.M. 178, 20 P. 2d 280, involved the question of whether a masonic temple was exempt under Article 8, Section 3. The educational feature of the Lodge's work was a system of teaching designed to make men more efficient in their professions, more useful to society, better in morality and more faithful citizens, and included teaching of an historical, philosophical, ethical, esthetic, and religious character. The charitable feature of the work was to help fellow members in financial need and to give financial assistance to needy wives, widows and dependents of members, sharing in supporting public charities, giving welfare services to hospitals and sanatoriums, helping to send children to a crippled children's hospital, and also included giving relief in time of public calamities. In holding that the Lodge was exempt the Court held that our exemption provision is quite liberal when compared with those of other States and indicated reluctance to apply the so-called general rule that tax exemption provisions must be strictly construed. It was further held that the fact that the property was not devoted exclusively to educational or charitable purposes but was also used for fraternal purposes did not take the case out of the exemption provision, indicating that "benevolent" purpose or purposes was enough. The Court said that charity and education are no less effective because accompanied by social and fraternal intercourse. However, it was indicated that education or charitable use must be both substantial and primary. This requirement would also apply here.

In Albuquerque Lodge No. 461, B.P.O.E. vs. Tierney, 39 N.M. 135, 42 P. 2d 206, the Court followed the Masonic Lodge case, supra, and made no distinction because the Elks Lodge devoted much of its building space to rooms rented primarily to members, and also because activities of a social and recreational nature were also carried on at the premises. In this case it was emphasized by the Court that it is the use of the property, not the declared objects and purposes of the owner, which determines the right to exemption. Therefore, in answering your inquiry it is well to point out that a mere declaration or worthy objects and purposes by the Women's Clubs is insufficient, they

must actually employ their personal and real property in effecting these objects and purposes.

On the other hand, **Albuquerque Alumnie Association Of Kappa Kappa Gamma Fraternity vs. Tierney** 37 N.M. 156, 20 P. 2d 267, was a case where the taxpayer was not permitted to be exempt under Article 8, Section 3. The question was whether certain property owned by a college sorority was exempt under the Constitutional provision in question. The sorority was a constituent of a national organization of the same name and was composed of selected women students at the University of New Mexico. The property in question was used as a fraternal home where the active members of this sorority boarded, roomed, and held social functions and practiced the principles of this society while in attendance at the University. The members encouraged scholarship, participated as a group and as individuals in University activities, discussed University and student problems and required of all the members a regular, orderly and moral life. Close supervision was imposed by the University authorities. In distinguishing the **Temple Lodge** case, there was here found no charitable use of the property in question nor did the sorority have any educational program of its own. It was not enough that the sorority encouraged refined surroundings and contracts, and high standards and ideals or that it encouraged scholarship, literary and scientific training of women students. Instead the Court found the dominant use of its property was to furnish a private boarding and rooming house. The fact that the sorority house relieved the University of New Mexico, to some extent, from contracting additional dormitories was not sufficient to take the sorority house into the tax exempted field. It would thus appear that the Hobbs Women's Club must have an educational program, either of its own or in connection with the educational program of the General Federation of Women's Clubs, to which the Hobbs Club is affiliated.

If the actual purpose or purposes of the Hobbs Women's Club is merely social or recreational, then it is not entitled to tax exemption. Opinion of the Attorney General No. 5740, dated April 22, 1953, in which it was held that country clubs are not exempt from taxation.

One object or program of the club is the promotion of adult education, increase financial support for public schools, library extension, vocational and personal guidance services and cooperation with UNESCO projects. Another program is the enlistment of the clubwomen in volunteer state and community Civil Defense efforts and to recruit women for armed services, nurses' training, and Red Cross services. An international relations education program is also included, as well as promoting the exchange of students and educational material between the United States and foreign countries. In addition, the program includes the provision of scholarships provided by clubs on a state, district and local level for both foreign and United States students, which certainly can be said to be an educational activity. Further, we note that the welfare program includes the establishment of adequate child health and welfare services, local health units, mental health facilities, extended opportunities for older people and volunteer service for hospitalized veterans, some of which activities can certainly be said to be charitable. We also note that a youth conservation program is included, which imposes the duty on

the Club to meet the needs of young people in the fields of health, education, recreation, employment and participation in community planning and family life, and which also includes a campaign to arrest narcotic addiction among young people. There is also included a program of education in music, literature and art.

If the declared purposes and objects of the Club are being carried out by the Club and its members, and apparently we must assume that they are, and the property of the Club is used in accordance therewith, then the objects and purposes above set forth, especially those commented on by us, would appear to be sufficiently educational in nature or charitable in nature, using charitable as "benevolent" as was done in **Temple Lodge No. 6, A.F. and A.M. vs. Tierney**, supra, so that the Constitutional requirements would be met. Admittedly this is a close case and contains some of the features found to be facts in **Albuquerque Alumnae Association of Kappa Kappa Gamma Fraternity vs. Tierney**, supra, and also contains some of the features which confronted the Attorney General when he rendered the above Opinion No. 5740. However, in our opinion we believe that the activities of the Club are sufficiently of an educational or charitable nature as to entitle its real and personal property to exemption, if used for such purposes.

The property must be devoted to the use or uses above indicated. This is a factual matter which we have not investigated, confining our opinion to the legal questions. It is to be pointed out that the Hobbs Women's Club must devote its property as heretofore indicated, otherwise this opinion will not apply to it.