

Opinion No. 60-63

April 11, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. W. R. Kegel District Attorney First Judicial District Santa Fe, New Mexico

QUESTION

QUESTION

Is the Santa Fe Horse Show Association exempt from taxation under Article 8, § 3, New Mexico Constitution?

CONCLUSION

See analysis.

OPINION

{*421} ANALYSIS

The application of Article 8, § 3, of the New Mexico Constitution has been before the Supreme Court on several occasions. The rule adopted by the Court may be stated thusly: It is not the purpose for which the association is organized but the **use** made of the property which is controlling. See **Albuquerque Alumnae Ass'n. of Kappa Kappa Gamma Fraternity v. Tierney**, 37 N.M. 156, 20 P. 2d 267; Opinion of the Attorney General No. 5740, 22 April 1953.

Further, the use on which the decision rests must be the primary and dominant use and not merely an incidental and sporadic use. See also **Albuquerque Lodge, No. 461, B.P.O.E. v. Tierney**, 39 N.M. 135, 42 P. 2d 206.

We have held that the fact that an organization is nonprofit is not sufficient to bring it under the exemption of Article 8, § 3. See Opinion of the Attorney General No. 5740. We have also held that no matter how praiseworthy the purposes of the organization are, it is still subject to taxation if the standards previously laid down are not met. See Opinion of the Attorney General No. 58-2.

From the articles of incorporation submitted with this request under which the subject association was organized, it appears that the corporation may or may not be exempt, according to the use to which the property is put. It is well settled that the burden of proving an exemption from a taxing statute falls upon the person seeking the exemption.

In the situation presented here the person seeking to be exempted should furnish the facts concerning the use to which the property is put to the proper administrative authority for a determination based on those facts. We do not feel this question should be answered by this office but that it is a question to be determined initially by the administrator charged with the duty of tax collection.

By: B. J. Baggett

Assistant Attorney General