

Opinion No. 19-2402

October 16, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. J. Albert Cloman, County Assessor, Alamogordo, New Mexico.

Head of Family and Soldier Tax Exemption.

OPINION

Answering your letter of October 10th, in which you ask several questions relative to the soldier's exemption act, we beg to advise:

Where a husband and wife are both on tax rolls, and husband does not own enough property to cover his exemption, the remainder of his exemption may come out of the wife's property if they are living together and occupying the same as their homestead.

It is our opinion that an ex-soldier is entitled to an exemption of \$ 200.00, if he is the head of a family, in addition to the \$ 2,000.00 exemption provided for in Chapter 65, laws of 1919.

We do not believe that where a soldier's property is listed on the tax rolls in partnership with other parties, he can claim exemption on this property under the soldier's exemption act, however, this is a matter upon which an opinion cannot be given with any degree of certainty as to its correctness, because the wording of the act is not such as to indicate the intent of the legislature in this regard. It may properly become a question for the Supreme Court to decide, and it would appear to us that the best policy to pursue at present would be not to extend the exemptions in such cases, and if the claimant is not satisfied he may institute legal proceedings by which the decision of the Supreme Court might be obtained.

The amount of the exemption is primarily taken out of the homestead property belonging to the husband, but it may be taken out of the homestead property belonging to the wife where they are living together and occupying the same. This does not preclude the claimant from designating other property owned by him from which the exemption may be deducted.

The act makes it the duty of every assessor annually to make a list of the persons entitled to exemption under the same and to make the deduction equal to the amount of the exemption out of the homestead property of either the husband or wife, unless he specifically requests that it be deducted from other property designated and owned by him. Of course, if for any reason, the assessor should be unable or fail to include in the list some one properly entitled to the exemption, he would have the right to claim the

exemption, and deduction could be made by the treasurer, or if too late for this, he might apply to the court and get an order making the correction.

I trust that the above will answer your questions satisfactorily,