

Opinion No. 22-3307

February 25, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Taxation Real Estate Building and Loan Associations.

OPINION

{*128} Referring to the matter of the taxation of the real estate of the Roswell Building and Loan Association, which was submitted by Mr. White together with the file of correspondence between the commission and the association, and concerning which we have had some previous conversation, I wish to advise:

The Roswell Building and Loan Association is the owner of real estate in the County of Chaves and County of Eddy, valued at the sum of \$ 18,736.47, according to the report submitted by the association. The association claims that this real estate is exempt from taxation because it represents moneys paid into the association by the stock holders and that this class of property can be taxed only in the event that such moneys paid in by stock holders is in excess of the amount loaned out by the association to share holders.

It is possible that the contention of the association may have some merit but I believe that a careful analysis of the section of the law which authorizes the State Tax Commission to tax mutual building and loan associations will show the fallacy of the argument of the secretary of the association.

{*129} Section 506, Chapter 133, Laws 1921, prescribes the method to be adopted by the commission in determining the valuation of building and loan property for taxation purposes. This section provides that:

"The commission shall assess said association for taxation, with the amount shown to have been paid into said association, up to the said first day of January, upon outstanding shares of stock, less the amount shown by the statements to have been loaned to shareholders, and neither the association nor the shareholders therein shall be liable to other taxation upon said shares of stock or the mortgages owned by said association upon real estate listed for taxation by the owners thereof."

You will note that it is only the shares of stock and the mortgages owned by the association upon real estate listed for taxation by the owners thereof that are specifically exempt from any other taxation by the exception in the act.

There is no exception contained therein of real estate owned by the association and for this reason, if for no other, we are of the opinion that real estate owned by the association is not exempt from other taxation.

This view, we are satisfied, is supported by reason, for real estate in which has been invested the funds received from share holders and which real estate is owned by share holders must be listed for taxation by the owners and in that manner is made to bear its proportionate share of the tax burden of the community. Taxing this real estate or taxing the money which is invested in it would result in double taxation on that particular piece of property.

Real estate owned by the association and purchased by the moneys received from share holders is not taxed or listed for taxation by anyone, nor are the funds which were used for the purchase of the property taxed in any manner. Therefore, this class of property would escape all taxation under the views of the association as expressed in its correspondence with you.

The purpose then of the act would be subverted as it would permit property to escape taxation when it is apparent that it was the intent of the legislature that all property belonging to the association should be taxed, but should be taxed once only.

For the foregoing reasons I am of the opinion that the real estate owned by the Roswell Building and Loan Association, and any other such association, is subject to taxation on the tax rolls of the county.

I beg to return herewith the file of papers submitted with your inquiry.