

Opinion No. 26-3875

January 21, 1926

BY: FRED E. WILSON, Attorney General

TO: Requested by: Hon. Thomas A. Whalen, District Attorney, Clayton, New Mexico.

1. The exemption from taxation of real and personal property in the sum of \$ 2,000.00, granted to soldiers by Chapter 130 of the Session Laws of 1923, cannot be defeated by the failure of the county assessor to perform the ministerial duties required of him by § 4 of said chapter 130.
2. If the soldier's name is omitted from the list which § 4 of Chapter 130, Laws of 1923, requires the assessor to make, and if, upon request of the soldier, the assessor refuses to place his name in the list, the soldier may bring action in the District Court, as provided in said § 4, for the purpose of compelling the assessor to insert his name in the list. However, the right of the soldier to the exemption is not dependent upon his name being in the list mentioned in § 4, or upon the institution by the soldier of said action.
3. If the soldier's name is omitted, for any reason, from the list prepared by the assessor, and he is, in fact, otherwise entitled to the exemption, he may bring his action in the District Court through the District Attorney, or independently, under the provisions of § 19 of Chapter 102, Session Laws of 1925, after the tax rolls are in the hands of the treasurer; and the court has authority to grant relief in such cases.

OPINION

The District Attorney of the Eighth Judicial District of New Mexico submits the following request for the opinion of the Attorney General:

"(a) The County Assessor has failed to place the name of a resident soldier entitled to exemption upon the list of resident soldiers of his County as required by Section 4, Chapter 130, of the Session Laws of 1923; the soldier has neglected to apply to the assessor to have his name placed on such list, and has neglected to file a petition in the District Court to require the assessor to place his name on said list before the tax roll for the year for which exemption is claimed was turned over by the assessor to the County Treasurer; after the roll is turned over to the County Treasurer, the soldier files his petition in the District Court praying that the Treasurer be ordered by the Court to correct the tax roll and allow the exemption. Under the provision of Chapter 130, of the Session Laws of 1923, has the District Court authority to grant this soldier the relief prayed for in the petition?"

(b) Does the fact that the soldier's name is not on the list required by Section 4 of the Act, before the roll is turned over to the treasurer, defeat his right to the exemption provided by law?"

I am of the opinion that the first question above submitted should be answered in the affirmative, and that the second question, as above stated, should be answered in the negative.

Since the signing of the Armistice, the effort of the Legislature to exempt soldiers from taxation to the extent of \$ 2,000.00 in property valuation, has received a great deal of attention by the courts and other officials. The constitutional amendment authorizing the Legislature to grant this exemption was submitted to the vote of the people and adopted. Acting under the authority of what the Legislature evidently considered a mandate from the people, the Legislature of 1923 enacted Chapter 130 for the purpose of granting such exemption. Section 3 of said Chapter 130 is as follows:

"Real and personal property of every soldier shall be exempt from taxation in the sum of two-thousand dollars. Said exemption shall apply to all taxes levied in the year 1923 and all which may thereafter be levied, but the said exemption shall not apply to any property held in trust by any soldier, except to the extent of the legal beneficial interest of such soldier herein. In addition to said exemption said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied."

It will be observed that this exemption, based upon the authority of the constitutional amendment before referred to, is specific and without any conditions or restrictions. The exemption applies to property upon which taxes may have been or may be levied, and such property in the sum of \$ 2,000.00 is not subject to taxation.

Section 4 of Chapter 130 requires the county assessor to annually prepare a list of soldiers resident in their respective counties entitled to said exemption, and to allow said exemption to soldiers whose names appear in said list. By said section this list is made prima facie evidence only that the persons whose names appear therein are entitled to the exemption allowed by the act. The preparation of this list is a duty which the law imposes upon the assessor. The assessor is required to prepare the list from any information he may have, or from any source available. If he omits the name of any soldier entitled to exemption, the Act further provides that upon refusal of the assessor to insert such name, such soldier may petition the District Court, and, upon proper proof, require the assessor to insert his name in said list. This section also very properly requires such application to the assessor, and such petition to the court, to be made prior to the delivery of the county treasurer of the tax roll for the year for which exemption is sought. This must necessarily be required for the reason that in this action the soldier is attempting to have the assessor place his name on the list, and the assessor could not do this if he had already turned the tax roll over to the treasurer. The placing of the soldier's name on the list prepared by the assessor is the object of the court proceedings mentioned in § 4 of said Chapter 130.

It will be observed that § 4 does not require the assessor to publish the list of soldiers, or give any notice of any character as to what names appear on the list prepared by him. In my opinion, the Legislature did not contemplate or intend that every person entitled to this exemption should go to the county seat and examine the list while the tax

rolls were in the hands of the assessor, and to institute an action while said tax rolls were in the hands of the assessor in case his name was omitted, as a condition precedent to obtaining the exemption which the Legislature said he should have. It is true, that if by chance the soldier discovers that his name is omitted before the tax rolls are turned over to the treasurer, and if he calls the assessor's attention to said omission, and the assessor refuses to insert his name in said list, that a remedy is provided, which the soldier may or may not avail himself of, to compel the assessor to place his name in the list.

The request of the District Attorney is so worded as to charge the soldier with neglect in applying to the assessor to have his name placed on such list, and neglect in failure to file a petition in the District Court to require the assessor to place his name on said list before the tax roll for the year is turned over to the treasurer. While I do not think the soldier could properly be charged with neglect for the reason that the statute imposes no duty upon him to see to it that his name is on the list, still the use of the word "neglect" in the question as propounded in each of the above instances does not, in my opinion, affect the answer to the question. The soldier cannot make application to the assessor to place his name on the list until he has discovered his name has been omitted. He cannot apply to the District Court to compel the assessor to place his name upon the list until the assessor has refused to place it there.

Section 19 of Chapter 102 of the Session Laws of 1925 provides that the taxes, as shown by the assessment roll when delivered to the county treasurer, shall not be altered, reduced or in any manner changed, except by direction of the District or Supreme Court. It further provides that if the treasurer shall discover any errors other than obvious clerical errors by which any injustice would be done any taxpayer, it shall be his duty to report the same to the District Attorney. This section provides further that any taxpayer complaining of any injustice may submit his complaint to the District Attorney, and makes it the duty of the District Attorney to file such complaint in the District Court without cost to the taxpayer injuriously affected. If the District Attorney refuses to permit the filing of such complaint, such taxpayer may proceed in his own name, and at his own expense, without the District Attorney. In such proceedings the District Court is authorized to make an order correcting the tax rolls and ordering same changed, so as to prevent injustice to the taxpayer complaining.

In my opinion, if the assessor fails to allow any soldier, entitled to the exemption granted by the Legislature, such exemption, and fails to show such exemption on the tax rolls, such soldier may bring his action in the District Court, through the District Attorney, or independently, under the provisions of § 19 of Chapter 102 of the Session Laws of 1925, after the tax rolls are in the hands of the treasurer, and that the court has authority to grant relief in such cases.

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