

## Opinion No. 35-965

March 27, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Hon. Don. R. Casados, Chairman, State Corporation Commission, Santa Fe, New Mexico.

{\*58} We are in receipt of your letter of March 26, with respect to whether or not the Raton Masonic Corporation should pay a Franchise Tax under the provision of Chapter 116 of the laws of 1935.

We have checked the article of incorporation of this company and find that it was organized under the general incorporation laws of this state in 1919. The purposes and object of the corporation is set forth in paragraph 3 of the articles of incorporation. Under this purpose the corporation is authorized to purchase, hold, use, enjoy, sell, mortgage, lease and convey such real estate and personal property and estate as the business, social benevolent and charitable purposes of the said corporation shall require. The corporation is authorized to issue ten thousand shares of capital stock of a par value of ten dollars per share.

Chapter 116 of the Laws of 1935 {\*59} levies an annual Franchise Tax on each domestic corporation for profit. Section 1 of this act defines the term domestic corporation for profit as meaning: "Any corporation organized under the laws of the state of New Mexico except. . . those corporations organized and conducted for religious, charitable, educational or social purposes, and not for profit."

Under this definition it is necessary not only that the corporation in order to be exempt from operation of this tax be not conducted for profit but we believe that corporations in order to come within the exemption to the Franchise Tax law must be organized under article 5 or article 8 of Chapter 32 of the Code of 1929. It is a fair presumption that a corporation organized under the general commercial corporation laws of this state is organized for profit unless the articles of incorporation specifically state otherwise. The articles of incorporation of the Company here under consideration does not so state. We therefore hold that the Raton Masonic Corporation is subject to the provisions of Chapter 116 of the Laws of 1935.

It will be a very easy matter for corporations, such as this one to amend their corporate charters so as to come specifically within the class of corporation not organized for profit if they actually should belong under this classification.

By J. R. MODRALL,

Asst. Atty. General