

Opinion No. 41-3932

October 24, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. J. O. Walton Assistant District Attorney Hobbs, New Mexico

{*116} In your letter dated October 22, 1941, you ask for an opinion from this office regarding the exemption of property owned by the American Legion in Hobbs and state that the property was purchased in May, 1940, but that no exemption was granted for the year 1940 or 1941 and you are wondering what effect the failure to claim such exemption may have upon the allowance of the same.

In Opinion No. 3894 this office has held that property of an American Legion Post is exempt from taxation under the provisions of Article VIII, Section 3 of the State Constitution, provided the property is actually used for charitable purposes. I am enclosing a copy of that opinion for your information.

If the property mentioned in your letter was actually used for charitable purposes for the balance of the year 1940, I do not believe an exemption could legally be allowed for the year 1940 due to the fact that on January 1 of that year the property was not owned by the American Legion nor used for charitable purposes, and it is the condition existing as of January 1 which would determine whether the exemption should be allowed or not.

As to the year 1941, if the property was actually used on January 1 for charitable purposes and has continued to be so used, the exemption may be claimed at any time, and, in my opinion, the same should be allowed by the court.

If the lots have no improvements upon them, then it may be difficult to prove that the property is being used for charitable purposes and in that event the property would not be entitled to exemption merely as a result of the ownership thereof being in the American Legion Post.

By C. C. McCULLOCH,

Asst. Atty. General