

## Opinion No. 42-4170

October 23, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. A. M. Frazier, Attorney Employment Security Commission Box 1301  
Albuquerque, New Mexico

{\*264} You have submitted to this office the question whether or not the Woman's Exchange of Santa Fe as an employer is subject to the taxes imposed by the Unemployment Compensation law of New Mexico, or whether they are excepted from its provisions by Section 11, Subsection (7) (F), of the Laws of 1941.

The only question involved is whether they are organized and operated exclusively for charitable or educational purposes within such section. Their purposes and objects appear to be educational or charitable except for the fact that they operate a dining hall which is open to the public generally and sell various handiwork which is consigned to them for a commission. They are a nonprofit organization.

It is my opinion that they are subject to this Act and not exempt by the above provision since, due to their dining hall and sales of various art work for a commission, they are not exclusively educational or charitable. It is immaterial under the cases that the profits from these business enterprises may be devoted to educational or charitable activities.

In the New Mexico case of Albuquerque Lodge vs. Tierney, 39 N.M. 135, the Court, under Article VIII, Section 3, which does not contain the word "exclusive," held that the Elks Club of Albuquerque was exempt from taxation even though they had a dining room, which, however, was not open to the public generally, and allowed roomers who were generally members. The Court specifically inferred that the holding was based on stare decisis, and it is intimated that they would not extend the doctrine.

Since this dining room is open to the public, the doctrine should not be extended to allow an exemption under this statute which uses the word "exclusively," where Article VIII, Section 3, does not use the word "exclusively."

{\*265} In the case of Church of the Holy Faith vs. State Tax Commission, 39 N.M. 403, at page 413, the Court stated:

"The general rule is that laws and constitutional provisions exempting property from taxation are to be strictly construed."

The court then held, at page 414:

"If the church could acquire and hold free from taxes property used in business enterprises, she would depart from her true mission and become a competitor of other business concerns, a field in which she is entitled to no advantage over them'."

Under this rule they did not allow an exemption of a house whose rents were used for religious or charitable purposes. Therefore, a very similar principle is involved as is herein involved and should govern this situation. In favor of this construction see *Young Men's Christian Association vs. City of Philadelphia*, 187 Atl. 204. It was held in this case that commercial business does not become "charitable institution" exempt from taxation merely because its earnings are devoted to charity.

Therefore, in view of the foregoing, it is my opinion that the Woman's Exchange of Santa Fe is not operated exclusively for educational or charitable purposes and is therefore subject to taxes imposed by the New Mexico Unemployment compensation.

By HARRY L. BIGBEE,

Asst. Atty. General