

Opinion No. 45-4820

November 16, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Bartley B. McDonald County Assessor Grant County Silver City, New Mexico

{*157} I regret that your letter dated October 20, 1945 inadvertently has not been answered. In your letter you request an opinion and, although this office ordinarily does not render opinions to county officials, except when requested by a District Attorney, due to the State-wide interest and importance of the matter, I am taking the liberty of writing the opinion directly to you.

You state that in Grant County there were several boys who were with the 200th A. A. Coast Artillery, and were prisoners of war in Japan and other places. Until recently it was not known whether some of these boys were dead or alive, but that you now have definite information that at least three of these men are dead, having died in prison while in active service. You inquire whether, if these soldiers were property owners, and would have been qualified to an ex-soldiers' exemption had they returned and been honorably discharged, the unmarried widows of such soldiers would be entitled to the \$ 2,000.00 property tax exemption.

Article 8, Section 5 of the Constitution provides, in part, as follows:

"The Legislature may exempt from taxation property of each head of a family to the amount of \$ 200.00, and the property of every honorably discharged soldier, sailor, marine and army nurse, and the widow of every such soldier, sailor or marine who served in the armed forces of the United States at any time during the period at which the {*158} United States was regularly and officially engaged in any war, in the sum of \$ 2,000.00. * * *"

Section 76-111 of the N.M. 1941 Compilation provides as follows:

"'Soldier' shall mean every honorably discharged soldier, sailor, marine and army nurse resident of New Mexico and who served in the armed forces of the United States for thirty (30) days or more at any time in which the United States was officially engaged in any war, including resident unmarried widows of such soldiers, sailors and marines."

Section 76-112 of the N.M. 1941 Compilation provides as follows:

"Excepting a dishonorable discharge, or one for misconduct, any discharge, including furloughs to the reserve or order relieving a member of a reserve corps from active duty, shall constitute an honorable discharge for the purposes of this act."

From a strict technical construction of the words "including resident unmarried widows of **such** soldiers, sailors and marines," it might be said that the word "such" refers only to an honorably discharged soldier. However, I believe the definition of an honorably discharged soldier, sailor, marine and army nurse should be liberally construed. This office, in the past, has held that any certificate showing that a serviceman has been separated from active service under honorable conditions amounts to an honorable discharge within the contemplation of the statute authorizing County Clerks to record honorable discharges free of charge. Although I find no decision by our Courts on this question, and no decision by Courts of other states, yet I am inclined to feel that a liberal construction on the definition of the words "honorable discharge" is justified, and that a certificate from the War Department showing that a person died or was missing while in active service on the battlefield, or while a prisoner, is sufficient to constitute an honorable discharge, as defined in the statute, and that the widow of such person, upon submitting such certificate to you, would be entitled to the ex-soldier's exemption, provided she is a resident, unmarried widow of such serviceman.

To hold otherwise would seem to work a rank injustice to the widow of a soldier, making the supreme sacrifice, when, had that soldier returned and been honorably discharged and died the following day, his widow would have been entitled to the exemption beyond any doubt.

My conclusion is supported by an opinion of the Attorney General of the State of Iowa, written May 24, 1945, in which he construed language similar to that contained in our statute as being sufficient to grant the exemption to the widow of a soldier who may not be honorably discharged, in the strict sense of the word, but as to whom there is official proof of his death, or that he is missing while in the service.

This opinion is also in line with an opinion written by the Attorney General of Alabama on September 21, 1945, to the effect that the holder of a certificate of honorable service is entitled to have the same recorded free of charge, just as an honorable discharge may be recorded. An honorable discharge is merely evidence that the soldier is separated from the service under honorable conditions.

I realize that should this matter be presented to the Courts, and a strict technical construction of the definition of the words "honorable discharge" should be adhered to, that the Courts would reach a different conclusion from that which I have reached herein. However, in view of the tendency in other states to construe the words liberally by the Attorneys General, and in view of my own feeling that the words should be construed liberally in order to achieve justice, I am of the opinion that where the soldier himself is otherwise qualified for the *{*159}* exemption, and dies while in the service, that an exemption should be allowed to his resident, unmarried widow, the same as would be allowed to the widow of a serviceman deceased subsequent to the date of discharge, provided such widow presents satisfactory proof to you of the separation from service of such deceased soldier under honorable conditions.