

Opinion No. 46-4858

February 18, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. E. P. Ripley Special Tax Attorney State Tax Commission Santa Fe, New Mexico

{*190} In your letter dated February 14, 1946, you enclose a letter to the Tax Commission from R. R. Posey, regarding assessment of personal property against the Mesilla Valley Bank. You request an opinion as to whether personal property of banks is subject to separate assessment. You do not state whether the bank in question is a National Bank or a State Bank.

{*191} Section 76-504 of the 1941 Compilation sets forth the method of assessing shares of stock in banks and banking institutions. This section specifically provides for the deduction of the assessed value of real estate owned by the bank, which is to be separately assessed by the County Assessor.

Section 76-105 of the 1941 Compilation provides as follows:

"Corporations doing banking business in this state, whether organized under the laws of the United States or under the laws of the State of New Mexico, shall be subject to no other taxation than that provided by law, except upon real property."

National Banks are instrumentalities of the Federal Government, and can only be taxed by a State in accordance with Congressional authorization.

In 12 U.S.C.A., Section 548, subsection 3, we find this language:

"Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value as other real property is taxed."

Under Note 63 there are numerous decisions holding that under this language the personal property of National Banking Associations is exempt. As an illustration, see *Bank of California v. King County*, 16 F. Sup. 976. Thus it is apparent that as to any National Bank in the State, the personal property cannot be separately assessed, since the personal property is included in the valuation of shares of stock assessed to the stockholders.

The only question remaining then is whether State Banks are subject to separate assessments upon their personal property, in addition to the assessment of the valuation of shares of stock against the stockholders.

In Opinion No. 714, dated January 17, 1934, the Attorney General's office held that Section 76-105 is an exemption statute, and that notes and mortgages of banks are not proper subjects of taxation. In view of the general law for the assessment of shares of stock, since the personal property of a bank is included in the valuation of the shares of stock against the share holders, a separate assessment of such personal property would constitute indirect double taxation of such personal property. *First National Bank in Albuquerque vs. State Tax Commission*, 43 N.M. 307.

In Article VIII, Section 1, of the New Mexico Constitution it is provided as follows:

"Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class."

The personal property of State Banks is taken into consideration, valued and taxed, by the statutory method of taxation of shares of stock owned by the stock holders. Under the Constitution, it is immaterial to whom the value of the personal property is assessed, so long as the property is taxed, and in view of Section 76-105, it was undoubtedly the intention of the Legislature to tax National and State Banks on the same basis, and avoid discrimination against State Banks.

This is illustrated in *Brophy v. Powell*, 121 P. 2d 647, an Arizona case, where this language is used:

"It is true that in these cases we held that the tax is against the stockholders, and not against the Bank, and that the corporation merely appears as an agent for the stockholders in the assessment and collection of the tax. But this, by no means, implies that the property, the legal title to which is in the Bank, is not in effect assessed and taxed under these statutes. The purpose of the Constitutional {**192*} provision is that all of the property in the State should bear its just burden of the taxes, and it makes no difference in whose name or under what description the property is assessed, as both it and its valuation are properly represented on the tax roll, either directly or indirectly. In determining the value of the shares, each and every item of property of the Bank and its value must be considered. We hold, therefore, that the statutes in question do not grant an exemption from taxation of the property owned by a Bank, although its value only appears indirectly as one of the component elements of the value of the shares of stock in the hands of the stockholders."

In view of the foregoing, it is therefore my opinion that since personal property is included in the valuation of shares of stocks of banks, assessed against the stockholders, that under Section 76-105 of the 1941 Compilation, the personal property of a State or National Bank should not be separately assessed upon the tax rolls by the County Assessor.