

Opinion No. 46-4888

April 5, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{*217} In your letter dated March 21, 1946, you inquire whether the Assessor of Sierra County can assess for taxes the boats of private individuals in Elephant Butte Lake, and the private homes surrounding the lake. I assume that these improvements are built upon lots or tracts of land leased from the Federal Government for that purpose.

Article 8, Section 1 of the Constitution, provides that 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.

Personal property of individuals, and leasehold interests are not exempt from taxation, although the leasehold interest ordinarily is taxed to the owner of the fee, rather than to the lessee. However, a different rule applies where the fee is owned by the public, and the great weight of authority is that the leasehold interest, whatever it may be, including any improvements, is subject to taxation.

Section 76-101 of the N.M. 1941 Compilation provides as follows:

"All property, real, personal and intangible, shall be subject to taxation, except as in the Constitution and existing law otherwise provided. Taxation upon property shall be at the rates and subject to the conditions as may be fixed by legislative acts."

Section 76-102 of the N.M. 1941 Compilation provides specifically for the taxation of improvements and other personal property located upon State or Federal lands, and leased for grazing, agricultural and mining purposes.

Although this section does not specifically mention leases for recreational purposes, yet under the Constitution and general statutes, and even without a statute, improvements on public lands, leased for recreational purposes, are subject to taxation to the extent of the interest of the lessee.

That a specific statute authorizing the levying of a tax on property otherwise subject to taxation is not necessary is illustrated by *Sims v. Vosburg*, 43 N.M. 255, in which the Court held that severed mineral interests {*218} in real estate are subject to taxation in the absence of a specific statute to that effect.

Cases on this question of taxation of the leasehold interests on public domain are annotated in 23 A. L. R. 248.

My conclusion in this matter agrees with that of the Attorney General, as shown by an opinion written March 17, 1922, appearing at Page 135 of the 1921-1922 Report, a copy of which I am enclosing herewith.

Whether or not improvements on a lease in the public domain should be treated for purposes of assessment and sale as personal property or real property is a question I am not attempting to decide at this time.