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January 26, 1960
Opinion No. 60-17

REQUESTED BY: Honorable Alvin F. Krupp
Graham County Attorney

OPINION BY: WADE CHURCH, The Attorney General

- QUESTIONS:
1. Is a widow required to be a legal resident of the State of Arizona at the time of the death of her husband in order to qualify for tax exemption?
 2. Is it necessary that the husband and wife be living together at the time of the death of the husband in order for a widow to qualify for tax exemption?

- CONCLUSIONS:
1. No.
 2. No.

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Article 9, Section 2 of the Constitution of Arizona, entitled Property subject to taxation; exemptions, reads, in part, as follows:

" * * * * . There shall be further exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States marines, members of revenue marine service, nurse corps, or of the components of auxiliaries of any thereof, residents of this state, not exceeding the amount of two thousand dollars, where the total assessment of such widow and such other persons named herein does not exceed \$5,000.00; provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty days in the military or naval service of the United States during time of war, and shall have been residents of this state prior to September 1, 1945. * * * " (Emphasis supplied)

Title 42, Chapter 2, Article 3, A.R.S. § 42-271, entitled Property subject to taxation; exceptions, paragraph 8, reads as follows:

"8. The property of widows, honorably discharged soldiers, sailors, marines, members of revenue marine service and army nurses, residents of this state, not exceeding the amount of two thousand dollars,

where the total assessment of such person does not exceed five thousand dollars, but no exemption shall be allowed to such persons other than widows unless they have served at least sixty days in the military or naval service of the United States during time of war, and have been residents of this state prior to September 1, 1945."
(Emphasis supplied)

A.R.S. § 42-274, entitled Affidavit, states the manner in which this exemption may be claimed and reads as follows:

"A. A person claiming exemption from taxation under the provisions of § 2, article 9, constitution of Arizona, shall appear before the county assessor and make affidavit as to his eligibility, answering fully all questions appearing on a form provided by the county assessor for such purpose or otherwise propounded, but a person in military service of the United States who is absent from the state, or who is confined in a veterans' hospital or in any licensed hospital, may make the required affidavit in the presence of any officer authorized to administer oaths upon a form obtained from the county assessor.

B. A false statement made or sworn to in the affidavit shall constitute and be punishable as perjury."

A.R.S. § 42-275 provides that the affidavit must be filed and the necessary evidence submitted upon which exemption is claimed between the first Monday in January and April 30 of each year, and the failure to file such affidavit and proof shall be deemed a waiver of such exemption.

Careful examination of the pertinent sections of the state Constitution and Arizona statutes fails to disclose any requirement that a widow must be a legal resident of the State of Arizona at the time of the death of her husband, or that the husband and wife must be living together at the time of the death of the husband, in order to qualify for tax exemption.

Honorable Alvin F. Krupp
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It is, accordingly, the opinion of the Attorney General that it is not necessary for a widow to be a legal resident of the State of Arizona at the time of the death of her husband or that the parties were not separated prior to the death of the husband in order to claim exemption, if the other requirements of the Arizona Constitution are met.

NEWMAN W. WHITE
Assistant Attorney General

Waide Church

WAIDE CHURCH
The Attorney General