

April 5, 1940

Mr. Glenn Copple,
County Attorney
Yuma, Arizona.

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Copple:

We have your letter of April 1st asking for our interpretation of Section 3, Chapter 91, Session Laws of 1929. The specific question you desire our opinion on is as follows:

"A widow woman who claims to be a resident of Yuma County, Arizona, but while in the State of Kansas, appeared before a notary public and swears to an application for a widow's exemption. Is this statute mandatory or merely directory, and may such a widow appear before a notary public and claim exemption, which claim for exemption is afterwards sent to the county assessor or the board of supervisors?"

Said Section 3 reads as follows:

"Section 3. Every person entitled to, or applying for exemption from taxation, as specified in said provision of the Constitution, shall appear before the County Assessor and give all information required and answer all questions contained in the forms and affidavits prescribed by said commission and subscribe and swear to the same before such county assessor. Any false statement made or sworn to in such affidavit shall constitute and be punishable as perjury."

Our Supreme Court in the case of Calhour v. Flynn, 37 Ariz. 62; 289 Pac. 157, held that the exemption extended to widows and veterans by the Constitution was not waived by the veteran or widow failing to comply with the provisions of said Chapter 91 but held that before a widow or veteran could prevent their property from being charged on the tax rolls with the taxes they must comply with the provisions of said chapter and that if they failed to comply with said chapter they were required to pay the taxes under protest and sue to recover it. The Court also held that the legislature did legally enact said Chapter 91 and that the regulations therein contained were reasonable and must be complied with by the person claiming the exemption.

In the cases of Conrad v. Maricopa County, 40 Ariz. 390; 12 Pac. (2d) 613; Grunow Clinic v. Oglesby, 22 Pac. (2d) 1076; and Oglesby v. Poage, 40 Pac. (2d) 90, our Supreme Court held that exemption laws should be strictly construed against the person claiming the exemption.

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You will note that said Section 3 requires of the claimant more than the mere filing of an affidavit but requires the claimant to appear before the assessor and give all information required and answer all questions contained in the forms and affidavits prescribed by the commission and to subscribe and swear to the same before the assessor. The Supreme Court said in the Flynn case cited above that upon the presentation of the claim for exemption the assessor became the tryor of the facts set forth and upon which the claim of exemption is made.

Following the rules announced by the Supreme Court in the cases above cited for the interpretation of exemption statutes, it is our opinion that said Section 3 should be strictly construed and that the claimant is required to appear before the assessor personally and make proof in the manner prescribed by said Section 3.

Our position is strengthened when we consider that said Section 3 provides that false statements sworn to in the affidavits should constitute and be punishable as perjury. If an affidavit of exemption under said statute could be made before a notary public in a foreign state we do not know of any way that the person making a false affidavit could be prosecuted in Arizona.

Yours very truly,

JOE CONWAY
Attorney General

EARL ANDERSON
Special Assistant
Attorney General.