

November 21, 1950  
Op. No. 50-255

Jack L. Ogg, Esq.  
Deputy County Attorney  
Yavapai County  
Prescott, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Ogg:

In answer to your letter of November 14 requesting the opinion of this office on certain questions asked you by the County Assessor of your county, we will answer the questions in the order in which they appear.

"Also, I would like to know whether auto lieu tax is collected for a full year or for the balance of the year on County or State vehicles (on which no tax has been collected) when they transfer to private ownership."

Article 9, Section 11 of the Constitution of Arizona, as amended in 1940, by vote of the people provides:

"(Assessment law--Registered vehicle license tax.)--  
The manner, method and mode of assessing, equalizing and levying taxes in the state of Arizona shall be such as is prescribed by law.

Beginning January 1, 1941, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax.

\* \* \* \* \*

In the event application is made after the beginning of the registration year for registration of a vehicle not previously registered in the state, the license tax for such year on such vehicle shall be reduced by one-twelfth for each full month of the registration year already expired."

While the foregoing section, which provides that one-twelfth of the tax shall be assessed and collected for each full month of the registration year remaining, is applicable to "a vehicle not previously registered in the state", and while a vehicle belonging to the State, which is exempt from the tax, has actually been previously registered, we believe the intent of the legislature is to tax such a vehicle when transferred to private ownership for the balance of the year in which it remains in such private ownership. Since the vehicle, had it been in private ownership, would have been subject to taxation on its ad valorem value prior to the enactment of the amendment above mentioned, and since the amendment provided the license tax in substitution for

the ad valorem tax, we are of the opinion that the vehicle is subject to the lieu tax computed on the basis above stated when it comes into private ownership.

See Brush v. State of Arizona, 59 Ariz. 525, 130 P. 2d 506.

The next question is:

" \* \* \* will you please find out his opinion as to whether lodges and organizations of that type should be assessed. \* \* \* "

Section 73-201 ACA 1939 provides that all property in the State of Arizona shall be subject to taxation with certain exceptions authorized by Article 9, Section 2 of the Constitution of Arizona, as amended, which includes the following:

"(Tax Exemption).--There shall be exempt from taxation all federal, state, county and municipal property. Property of educational, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law. \* \* \* "

It is the opinion of this office that the property of such institutions as you mention, namely, lodges and fraternal orders is not exempt from taxation. This has been well settled by our Supreme Court in the case of Conrad, et al vs. County of Maricopa, et al, 40 Ariz. 390, 12 P. 2d 613, which holds that the Arizona Lodge No. 2, Free and Accepted Masons is not "a charitable institution for the relief of the indigent and afflicted". In that case Justice Lockwood, the other two judges concurring, said:

"There are two general principles which we think are applicable to this situation. The first is that laws exempting property from taxation are to be construed strictly. The presumption is against the exemption, and every ambiguity in the statute will be construed against it. Woller v. City of Phoenix, 39 Ariz. 148, 4 Pac. (2d) 665; Philadelphia etc. R. Co. v. Maryland, 10 How. 376, 13 L. Ed. 461.

The second is the well-known rule of ejusdem generis, to the effect that when general words follow the enumeration of particular classes, the general words will be limited to persons or things of the class to which the specific words belong. 36 Cyc., p. 1119.

The constitutional provision does not of itself exempt any property from taxation. It merely permits the legislature to exempt such of the property of 'charitable . . . associations or institutions' as

is not used or held for profit. And under this the legislature cannot grant more, but may give much less than the exemption permitted by the Constitution.

\* \* \* \* \*

The exemption specifies, first, certain named institutions, to wit, hospitals, asylums, and poorhouses, and then adds 'other charitable institutions'; and limits particularly the purpose for which all these institutions are to be used as being 'for the relief of the indigent or afflicted,' and also exempts the 'land there-appurtenant.' The words 'hospitals, asylums, poorhouses,' certainly would ordinarily be held to apply to physical structures and not legal organizations. Further the use of the word 'appurtenant' in ordinary legal parlance generally presupposes not an individual or organization which owns certain property, but the physical property itself. We think, therefore, that the 'charitable institutions' referred to in the subdivisions of section 3066 (Section 73-201 ACA 1939) above quoted are physical property or buildings, whose principal use is for the relief of the indigent or afflicted, when such property is not used or held for profit, and not the organizations themselves, even though charitable in their nature, which may or may not hold certain of their property as exempt." (Bracketed material supplied)

It follows, therefore, that since the property of such lodges, fraternal orders and similar institutions is subject to taxation, it must be assessed at the time and in the manner as provided in Section 73-402 ACA 1939.

Your next question is:

"A Joint tenancy deed is made to a veteran and his wife. The intention of this kind of deed seems to be that upon death of either owner the property becomes the property of the other owner without probate.

Our County Attorney is of the opinion that the veteran is entitled to full exemption. We wonder if this is correct. Both the veteran and his wife obviously have an interest, because if he died, the property is hers without estate procedure."

Joint tenancy between husband and wife is recognized by Section 71-122, so long as the grant or devise to the joint tenants is made by express words and is accepted as such by grantees. Our Supreme Court, in the case of Estate of Baldwin, 50 Ariz. 265, 71 P. 2d 791, has clearly enunciated the law relating to joint tenancy between husband and wife:

"Property acquired by both spouses during marriage likewise belongs to the community, but whether acquired by one or both, either may convey his interest to the other and thus dissolve the community. In *Luhrs v. Hancock*, 6 Ariz. 340, 57 Pac. 605, *Main v. Main*, 7 Ariz. 149, 60 Pac. 888, *Colvin v. Fagg*, 30 Ariz. 501, 249 Pac. 70, *Jones v. Rigdon*, 32 Ariz. 286, 257 Pac. 639, and other cases, it has been decided by this court that a husband may convey his interest in the community to his wife, and in *Schofield v. Gold*, 26 Ariz. 296, 225 Pac. 71, 37 A.L.R. 275, that a wife may convey hers to her husband. If the spouses may contract with each other concerning the interest of either in the community, there can be no reason why they may not agree between themselves that it may be conveyed to them in the first instance and held in joint tenancy. As between husband and wife a joint tenancy is an exception to the community property rule of this state and in derogation of the general policy of that system of holding property, and this being true a clause in a deed creating a joint tenancy between them should be effective only where it clearly appears that both spouses have agreed that the property should be taken in that way. A deed is generally signed by the grantor only, hence before a joint tenancy clause may be held binding on the grantees and the community property law thereby defeated, we think it necessary not merely that the deed contain language creating such an estate but that it further appear that the deed was accepted by the spouse whose property it is sought to bring within its terms, knowing that it contained that provision. If the deed itself contains nothing showing this fact, such, for instance, as an acceptance of the terms thereof in the handwriting of the grantees, or an endorsement by the recorder that it was placed of record at the request of the deceased spouse, it might be established by any proper extrinsic evidence."

In 48 C.J.S. at page 930, § 6, et seq., there is explained the rights of joint tenants.

An estate held in joint tenancy is but one estate, not a number of estates equal to the number of joint tenants, and for some purposes the joint tenants are as one person. Each joint tenant is seized of the whole estate and is said to hold the estate per my et per tout, that is, by the half and by the whole.

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Although a joint tenant is not authorized to act or contract with respect to the joint estate and may not convey away the whole without the authority or consent of his cotenants, nevertheless where the act of one is beneficial to the others such act will be regarded as the act of all insofar as sharing the benefit thereof is concerned, and each joint tenant has the right to do all things necessary for the preservation of the property.

It is therefore the opinion of this office that a veteran holding title to property as joint tenant with his wife is entitled to exemption on the whole of the property.

Sincerely yours,

FRED O. WILSON  
Attorney General

PHIL J. MUNCH  
Assistant Attorney General

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