

January 19, 1948

Mr. Ruffo Espinosa
County Attorney
Western Union Building
Nogales, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Espinosa:

We have your letter of January 7, 1948, wherein you request the opinion of this office on the question as to whether a widow or veteran who has claimed a tax exemption upon his or her real estate, so that no real estate property tax is payable by such widow or veteran, may be considered to be a "real property taxpayer" within the meaning of Section 16-201, Arizona Code Annotated, 1939, which provides for the incorporation of a city or town if favored by a majority of the "real property taxpayers" voting at an election called for that purpose.

A somewhat analogous problem was presented to this office by the Superintendent of Public Instruction wherein he requested the opinion of this office as to whether a veteran or widow, who pays no taxes by virtue of the constitutional exemption, may vote at a school bond election in view of Article 7, Section 13, of the Arizona Constitution which limits the right to vote upon bond issues to "real property taxpayers". In an opinion dated June 4, 1947, we advised the Superintendent that it was the opinion of this office that the veteran or widow could vote at such bond election despite the fact that such veteran or widow paid no tax by virtue of having claimed the exemption. The following is an excerpt from that opinion.

"As a final query you ask whether a veteran or widow who is exempt from paying taxes on his or her property is qualified. An analogous question arose in *City of Phoenix v. State*, supra. In a case in quo warranto the issue involved the sufficiency of a petition for annexation in view of the fact that among the signers were soldier owners of tax-exempt property. After indicating that at all costs the veteran's property is placed on the assessment roll and made subject to a tax lien, the court decided that, whether or not exemption was claimed, such owners may sign the petition for annexation. At this point the court stated as follows:

'Inasmuch as a widow's or soldier's property must be placed on the tax rolls and when their assessment exceeds \$2,000 none of the excess is exempt, and in case the total assessment is \$5,000, or over, not even the \$2,000 is, it is our view that they may sign the petition, for widows and soldiers must be treated as a class in determining their right to sign, and since some of them have only a partial exemption, others none at all, we think they may all sign'.

It is thus the holding of our Supreme Court that soldiers and widows, potential claimants of exemption, must be treated as a class, inasmuch as they may be required to bear the burden of taxation consequent upon annexation, regardless of their statutory rights. This, in our opinion, is clear authority for their being regarded as taxpayers within the meaning of Article 7, Section 13, Arizona Constitution, and Section 54-419. They are, therefore, qualified to vote at school bond elections".

The question is a very difficult one. We understand that a case is now pending before the Supreme Court of the state in which this question has been raised with reference to a school bond election and it is not unlikely that the Court will take an opposite view. However, until the Supreme Court adopts a different rule we intend to adhere to our former opinion in this matter.

It is our opinion, therefore, that a veteran or widow is a "real property taxpayer" within the meaning of Section 16-201 Arizona Code Annotated, 1939, despite the fact that such veteran or widow pays no real property tax by virtue of the constitutional exemption.

Very truly yours,

EVO De CONCINI,
Attorney General

CHAS. D. McCARTY,
Assistant Attorney General