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ARIZONA ATTORNEY GENERAL

November 30, 1951
Opinion No. 51-311

Honorable Warren L. McCarthy
County Attorney
Phoenix, Arizona

Dear Mr. McCarthy:

This is in reply to your letter of November 26, 1951 wherein you passed to us a letter written by C. L. Sparks, Assessor of Maricopa County, desiring us to answer Mr. Sparks' question which is as follows by paraphrasing it:

"Is it legal for a widow or a veteran to file their affidavit for tax exemptions under Section 73-304 ACA 1939 before the first Monday in January 1952".

In order to properly answer this, it appears to us that we should quote the section, also opinions from several courts including our own. The Statute is 73-304 Proof of Exemption

"The assessor may, in his discretion, require additional proof of the facts stated by the affiant before allowing an exemption. Failure upon the part of a person entitled to exemption to make affidavit or furnish evidence as required by this act, between the first Monday in January and the thirtieth day of April each year shall be deemed to be a waiver of exemption of such person."

Our courts have ruled that such regulations are not unreasonable and that an individual does not lose his constitutional rights to exemption from taxation by reason of the regulations imposed by the Legislature yet the Legislature has a right to establish reasonable procedure. Our Court said failure of a veteran to comply with the procedure outlined by Section 73-304 constituted a waiver or loss of his constitutional right to exemption to taxation for the year.

State vs Allred
67 Ariz. 320, 195 P. 2d 163

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It appears to us that it will be necessary to quote several definitions of the word "between". The Supreme Court of Iowa said as follows:

"Where a statute requires that a certain thing shall be done between one day and another each of such days is to be excluded."

Robinson vs Foster
12 Iowa 100

The Florida court defines this in practically the same words as follows:

"The word 'between' when used in speaking of the period of time between two certain days generally excludes the days designated as the commencement and termination of such period."

Hodges vs Ellstrup
114 Southern 521

The Supreme Court of Illinois defines "between" as follows:

"When the word 'between' is used with reference to a period of time bounded by two other specified periods of time, such as between two days named, the days or other periods of time named as boundaries are excluded, and 'between' has a like meaning when used with reference to boundaries in space."

Winans vs Thorpe
87 Ill. 297

A more recent Illinois case defining the word "between" in regard to time said as follows:

"When word 'between' is used with reference to a period of time bounded by two other specified periods of time, such as between two days named, the days or other periods of time named as boundaries are excluded."

Greenberg vs Neiman
49 N.E. 2d 817

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From a reading of the Statute quoted and these several decisions, it appears to us that the act of filing an affidavit cannot legally be made before the Tuesday following the first Monday in January and must be filed before the end of the business day of April 29 in order to secure the exemption. It is obvious that an individual constitutionally entitled to tax exemption could not legally file his exemption during the month of December or any other month other than the time specified by the Legislature and when the Legislature used the word "between" the first Monday in January and the 30th day of April they excluded the first Monday in January as well as all periods of the year before that date. Likewise, they excluded the 30th day of April and all days following that during the year.

Yours very truly,

FRED O. WILSON
Attorney General

CHARLES ROGERS
Assistant Attorney General

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