

**OPINION
59-263**

April 22, 1959 (OPINION)

TAXATION

**RE: General Property Assessment - Exempt Property -
Veterans' Organizations**

This is in reply to your letter of April sixteenth asking for an opinion as to whether the hotel portion of a building purchased by the VFW Club in Valley City should be exempt even though the VFW intends to continue to operate the hotel portion as a public hotel by leasing out its fifty rooms to individuals other than members. You state that the building is a large business building known as the Valley Hotel in which the VFW had leased club rooms which it will continue to use as club rooms and in which two stores have been operated, for which the same space in the building will be leased to them by the VFW. You state that the VFW Club claims exemption for that part of the building used for club rooms and also will claim exemption for that part of the building in which it will operate the fifty room hotel.

Their claim for exemption of the hotel portion of the building is based on the fact that YMCA and YWCA clubs at Fargo, Grand Forks and Minot operate a building which contains club rooms as well as rooms which are leased as hotel rooms, and that such organizations are exempt from taxation.

It is my opinion that only the part of the buildings in which the VFW Club has its club rooms should be exempt from taxation and that that part of the building operated as a hotel by the club, together with the personal property used to furnish the hotel rooms should be assessed and taxed. That part of the building leased to the two stores, of course, is also subject to assessment and taxation.

A distinction must be drawn between the VFW organization and the YMCA and YWCA clubs in the state. The exemption for VFW clubs is provided in subsection 11 of section 57-0208 which exempts real and personal property owned by lodges, chapters, commanderies, and so forth, not organized for profit and used by them for places of meeting and for conducting their business and ceremonies. I do not believe that YMCA and YWCA organizations are exempt under this subsection but instead are exempt under subsection 8 of section 57-0208 which exempts all buildings and contents thereof belonging to institutions of public charity used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit. In the absence of a provision expressly exempting YMCA or YWCA Associations, it is the general rule that such organizations are charitable institutions within the meaning of that term as used in exemption statutes. See 51 Am. Jr. 610, section 640; 34 A.L.R. 1068, Part II b, and 81 A.L.R. 1455. The cases cited in these authorities hold that dormitory accommodations or rooms made available to members of the association for a fee is not a leasing or

a use with a view to profit, within the meaning of section 57-0208(8), such as will destroy the exemption. The reasons for these holdings are that the accommodations are restricted to members and the primary purpose for having the accommodations available is to help carry out the purposes of such a charitable organization in its program for the elevation and betterment of young men and women and boys and girls. The fees charged for use of these accommodations are incidental to such a program; that is, the accommodations are not offered in order to collect rentals or to realize a net income but are offered in order to help carry out its program of helping young people who are members.

In contrast to this it appears that the VFW will operate the hotel as a public hotel rather than restricting it to use by its members, and that the purpose in doing so will be to provide income for use by the club. As stated in 34 A.L.R. 1073, quoting YMCA v. Douglas County, 60 Neb. 643, 83 N.W. 924: "There is a clear and well defined distinction between the use of property and the use of the income derived therefrom." As applied to the VFW's operation of the hotel, use of the income for VFW purposes is not a use of the hotel portion of the property for places of meeting and for conducting its club business and ceremonies within the meaning of the exemption provisions of section 57-0208(11).

Accordingly, it is my opinion that the only real and personal property of the VFW which should be exempt is that used by it for its meeting place and for conducting its club business and ceremonies, and that all of the rest of the building owned by it, including the personal property in the hotel rooms, is subject to assessment and taxation. That portion of the building which is not exempt should be assessed and valued in accordance with the opinion from this office dated October 10, 1955, appearing on pages 124-127 of the Report of the Attorney General for the period of July 1, 1954 to June 30, 1956.

LESLIE R. BURGUM

Attorney General