

Opinion No. 648

Taxation—Federal Subsistence Homestead Corporation—Exemption From Taxation.

HELD: Lands purchased by the Federal Subsistence Homestead Corporation, with the view of placing owners of submarginal lands thereon, are not subject to taxation.

November 28, 1934.

According to your request for our opinion, you have advised the county assessor of Phillips County that certain lands therein recently purchased by the Federal Subsistence Homestead Corporation, with the view of placing owners of submarginal lands thereon, are not subject to taxation and should be omitted from the assessment roll. You ask us to approve the advice so given, if we may.

Sections 208 and 209, Title II, of the National Industrial Recovery Act of 1933, are as follows:

"To provide for aiding the redistribution of the overbalance of population in industrial centers \$25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for making loans for and otherwise aiding in the purchase of subsistence homesteads. The moneys collected as repayment of said loans shall constitute a revolving fund to be administered as directed by the President for the purposes of this section.

"The President is authorized to pre-

scribe such rules and regulations as may be necessary to carry out the purposes of this title, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500 or imprisonment not to exceed six months, or both."

In order to effectuate the intent and purpose of Congress as expressed in Section 208, the President promulgated an order authorizing the Secretary of the Interior to exercise all the powers vested in him, for the purpose of administering all the provisions of said section, including full authority to designate and appoint such agents, to set up such boards and agencies, and to make and promulgate such regulations as he may deem necessary or desirable.

In making loans and otherwise aiding in the purchase of subsistence homesteads the administrator may take title to homestead sites in the name of the United States or in the name of a corporation organized for such purpose, and enter into contracts for the sale of homestead sites to prospective settlers. (Opinion of Attorney General, March 19, 1934.)

The Federal Subsistence Homestead Corporation is, doubtless, an instrumentality of the government under the direction and control of the President. (*Skinner & Eddy Corp. v. McCarl*, 275 U. S. 1, 72 L. Ed. 131; *United States v. Clallam County*, 283 Fed. 645, aff. 263 U. S. 341, 68 L. Ed. 328; *Russell Wheel & Foundry Co. v. United States*, 31 Fed. (2d) 826; *North Dakota-Montana W. G. Ass'n. v. United States*, 66 Fed. (2d) 573.) All property of the United States is exempt from taxation (*Ford v. Great Falls*, 46 Mont. 292; 61 C. J. 360; *Mont. Const., Ord. 1, Subd. 2, Id., Art. XII, sec. 2*; *Rev. Codes 1921, sec. 1998*), and, unless Congress otherwise determines, this immunity extends to property of a governmental instrumentality or agency. (*Ford v. Great Falls*, above; *Swords v. Simineo*, 68 Mont. 164; 61 C. J. 371.) Congress, we feel certain, has not legislated with regard to the taxation of property acquired by the Federal Subsistence Homestead Corporation.

We, therefore, think you were right in advising the county assessor as you did.