

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL December 21, 2001	No. I01-024 (R01-044) Re: Tax Exemption for Cemetery Property
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TO: The Honorable Lori Daniels
State Senate

Question Presented

You have asked whether Proposition 105, a recent constitutional amendment allowing a tax exemption for cemetery property, applies to personal as well as to real property.

Summary Answer

Although Proposition 105 would allow an exemption from ad valorem taxation for personal property owned by cemeteries and used to inter human beings, the implementing statute adopted by the Legislature limited the exemption to real property.

Background

At the 2000 general election, Arizona voters approved Proposition 105, an amendment to the Arizona Constitution to permit a tax exemption for the property of cemeteries. The Legislature referred this constitutional amendment to the ballot for the voters' consideration. *See* S. Con. Res. 1010, 44th Legis. 2d Reg. Sess (2000). Proposition 105 provided: "The Legislature may exempt

the property of cemeteries that are set apart and used to inter deceased human beings from taxation in a manner provided by law." Ariz. Const. art. IX, § 2(7) (as amended by Proposition 105, approved by voters November 7, 2000).

The tax exemption for cemetery for property in Proposition 105 was not self-executing. To implement the constitutional amendment, the Legislature amended A.R.S. § 42-11110 (conditioned upon voter approval of Proposition 105) to provide that "[c]emeteries as defined in § 32-2101 that are set apart and used to inter deceased human beings are exempt from taxation." 2000 Ariz. Sess. Laws ch. 258, § 1. Section 32-2101(10) defines "cemetery or cemetery property" as:

any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault entombments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.
- (d) A cemetery plot, including interment rights, mausoleum crypts, niches and burial spaces.

A.R.S. § 32-2101(10).¹

¹This definition is in the statutes governing the real estate department and its regulatory responsibilities. *See generally*, A.R.S. §§ 32-2101 to -2198.

Analysis

All property, unless specifically exempt under the laws of the United States or under the provisions of the Constitution of the State of Arizona, is subject to taxation. Ariz. Const. Art. IX, § 2 (13). The Legislature cannot exempt from ad valorem taxation any property or class of property not specified in the Constitution. *Kunes v. Samaritan Health Service*, 121 Ariz. 413, 415, 590 P.2d 1359, 1361 (1979). Moreover, exemptions from taxation are not favored and laws are strictly construed against them. If any doubt arises as to an exemption, that doubt must be resolved against the exemption. *Id.*

Proposition 105 permits the Legislature to exempt the "property of" cemeteries, but it did not define "property." Generally, words in the constitution are interpreted according to their plain and ordinary meaning. *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402, 406, 18 P.3d 713, 717 (App. 2001). Webster's defines property as "something that is or may be owned or possessed." *Webster's Third Int'l Dictionary* 1818 (1993). This definition includes real as well as personal property. In addition, the statutory definition of property expressly includes both real and personal property. A.R.S. § 1-215(33). Finally, other exemptions in Article IX, § 2 that use the term "property of" include personal property. For example, the exemption for "[p]roperty of educational, charitable and religious associations or institutions not used or held for profit" extends to personal property. Ariz. Const. Art. IX § 2 (2); *Cf. Kunes*, 121 Ariz. at 415-16, 590 P.2d at 1361-62 (equipment would have qualified for exemption if it was owned and used by a charitable institution). For these reasons, the term "property of " cemeteries in Proposition 105 includes real and personal property.

To determine the scope of the tax exemption for cemeteries, however, the implementing legislation must also be examined. In analyzing a similar constitutional provision concerning tax exemptions for certain property of charitable and religious associations or institutions, the Arizona Supreme Court established that the Legislature cannot exempt more property than the constitution permits, but may exempt less. *See Kunes*, 121 Ariz. at 415, 490 P.2d at 1361 (citing *Conrad v. Maricopa County*, 40 Ariz. 390, 393, 12 P.2d 613, 614 (1932)). This principle applies equally to the tax exemption for cemetery property permitted by Proposition 105 because that proposition merely provides that "[t]he Legislature may exempt the property of cemeteries" from taxation. The Proposition does not require the Legislature to do so, nor does it require the Legislature to exempt *all* cemetery property from taxation.

The legislation implementing Proposition 105 amended A.R.S. § 42-11110 to exempt from taxation "cemeteries as defined in § 32-2101(10) that are set apart and used to inter deceased human beings." Section 32-2101(10) contains a list of property that includes a burial park for earth interments, a mausoleum for crypt or vault entombments, a crematory, or a crematory and columbarium for cinerary interments, and a cemetery plot, including interment rights, mausoleum crypts, niches and burial spaces. A "burial park" for earth interments would consist of land. A "mausoleum" is "a magnificent tomb," "a tomb for more than one person," or a large gloomy and usually ornate building, room, or structure." *Webster's Third Int'l Dictionary* 1395 (1993). A "crematory" is "a furnace for cremating the bodies of the dead," or "a building containing such a furnace." *Id.* at 534. A "columbarium" is "a structure of vaults lined with recesses for cinerary urns." *Id.* at 450. A "plot" is a "small portion of land in a cemetery usually containing two or more graves." *Id.* at 1742.

Personal property, for the purposes of the property tax statutes, includes "property of every kind, both tangible and intangible, not included in the term real estate." A.R.S. § 42-11001(7). Real estate is defined as including "the ownership of, claim to, possessions of or right of possession to lands or patented mines." A.R.S. § 42-11001(10). Real estate includes buildings and other fixtures to the property. *See Gilbert v. State ex rel. Morrison*, 85 Ariz. 321, 338 P.2d 787 (1959) (holding that certain buildings were real estate rather than "personalty"); *Murray v. Zerbel*, 159 Ariz. 99, 764 P.2d 1158 (App. 1988) (describing test to determine whether item is a fixture to real property). The list in A.R.S. 32-1101(10) that defines cemeteries includes real property and property affixed to the land, but nothing in the list is clearly personal property. Therefore, the exemption in A.R.S. § 42-11110 for "cemeteries as defined by § 32-2101(10)" includes real, but not personal, property.² This conclusion is supported by the statutory language and by the principle that exemptions are strictly construed. *See Kunes*, 121 Ariz. at 415, 590 P.2d at 1361 (presumption that tax exemptions not favored).

Conclusion

The statute implementing Proposition 105 does not clearly designate personal property of a cemetery as being exempt from ad valorem taxation. The definition of cemeteries or cemetery

²The Supreme Court of Appeals in West Virginia reached a similar conclusion, holding that personal property of cemeteries was not exempt under a statute providing for an exemption for "cemeteries." *In re Hillcrest Memorial Gardens, Inc.*, 119 S.E.2d 753 (W. Va. 1961). The court noted that unlike other exemptions, the statute did not include the language "property of" or "property belonging to" cemeteries. *Id. at 757*. The court concluded that the word "cemeteries" standing alone denotes real estate only, as distinguished from personal property.

property contains a list of real property or fixed improvements only, and gives no examples of personal property. Therefore, the exemption does not extend to personal property of a cemetery.

Janet Napolitano
Attorney General