

April 5, 1960.

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

WILLIAM KINGSLEY, *Deputy Director*
Division of Taxation
State House Annex
Trenton, New Jersey

FORMAL OPINION 1960—No. 6

DEAR SIRS :

You have asked for our opinion as to what assessment valuation of Class II railroad property should be included in the computation of the apportionment of county taxes among the municipalities of each County. The same question arises in promulgating a table of equalized valuations to be used in the calculation and apportionment of State school aid funds under N.J.S.A. 54:1-35.1.

The basic formula for the apportionment of county taxes and for the distribution of school aid funds includes the use of aggregate valuations for each municipality based essentially upon the true value of all real property in the municipality (either assessed initially at true value or "equalized" to true value) plus the aggregate value, as assessed, of all personal property. *See*: R.S. 54:3-17 to 19; N.J.S.A. 54:1-35.2; N.J.S.A. 54:4-52; *City of Passaic v. Passaic County Board of Taxation*, 31 N.J. 413 (1960); *City of Passaic v. Passaic County Board of Taxation*, 18 N.J. 371 (1959); *Borough of Totowa v. Passaic County Board of Taxation*, 5 N.J. 454 (1950).

In the most recent *Passaic* case, *supra*, 31 N.J. at 418, Chief Justice Weintraub, speaking for the Court, said:

"Additionally, it is pertinent to add that in directing the preparation of the equalization table for use in the distribution of state aid to schools, a subject kindred to the matter of taxation, *City of Passaic v. Passaic County Board of Taxation, supra*, (18 N.J., at page 385), the Legislature directed the inclusion of both real and personal property, requiring real property to be equalized at true value and personal property to be taken as assessed. L. 1954, c. 86; N.J.S.A. 54:1-35.1 et seq."

Class II railroad property valuations have not heretofore been involved in an "equalization" computation as has usually been the case with other real property under R.S. 54:3-17 and N.J.S.A. 54:1-35.3, since Class II railroad property is required to be assessed by the Director of the Division of Taxation at full value under N.J.S.A. 54:29A-17, and it is assumed that the Director does so to the best of his ability. Therefore, the Director's valuations of Class II railroad property are accepted as representing true value for the purposes of apportioning county taxes and State school aid funds. However, the question now raised arises out of the fact that the Director has reduced initial valuations of Class II railroad property in certain municipalities "to less than true value, when necessary to prevent discrimination" as required by the Supreme Court in *D. L. & W. R.R. Co. v. Neeld*, 23 N.J. 561, 575 (1957). *See also*: *Borough of Hasbrouck Heights v. Division of Tax Appeals*, 54 N.J. Super. 242 (App. Div. 1959). Where Class II railroad property valuations have been

reduced for these purposes they no longer represent true value. Such reduced valuations therefore, in our opinion, cannot be used for the apportionment purposes aforesaid. Instead, the initial valuations, taken to represent the corrected full true value of Class II railroad property, after review by the Director, should be used.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

April 7, 1960.

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION, 1960—No. 7

DEAR MR. KERVICK:

You have asked our opinion whether a former widow of a war veteran who, upon remarriage, loses the exemption from taxation granted her by Art. VIII, Sec. 1, Par. 3 of the New Jersey Constitution and N.J.S.A. 54:4-3.12i et seq. is entitled to have such exemption restored upon the termination of her second marriage by divorce.

A tax exemption is granted to a "widow . . . during her widowhood." Const. Art. VIII, Sec. 1, Par. 3; N.J.S.A. 54:4-3.12j. Neither the statute nor the Constitution defines the phrase "widow . . . during her widowhood." Therefore, in the absence of any indication of a contrary legislative intent, the phrase must be construed to have its usual and generally accepted meaning.

The term "widow" has been defined by judicial decisions as "a woman who has lost her husband by death and is still unmarried." *Block v. P. & G. Realty Co.*, 96 N.J. Eq. 159, 160 (Chan. 1924). This legal definition of the term is in accordance with common usage. See *Montclair Trust Co. v. Reynolds*, 141 N.J. Eq. 276, 279 (Chan. 1948). Therefore, a taxpayer who would otherwise be entitled to a tax exemption as the widow of a war veteran loses her exemption upon remarriage, since she is no longer a widow. N.J.S.A. 54:4-3.12n expressly recognizes that the remarriage of a former widow terminates her widowhood and, therefore, also her tax exemption privilege.

If a former widow of a war veteran has terminated her widowhood by remarriage, her status as a widow is not revived when her second marriage ends in divorce. A divorce terminates a marriage (although not necessarily all the obligations thereof) as of the date of entry of final judgment. *Wigder v. Wigder*, 14 N.J. Misc. 880 (Chan. 1936). A judgment of divorce differs from a judgment of nullity in that the latter holds the marriage void *ab initio*. *Wigder v. Wigder, supra*. Cf. N.J.S. 2A:34-1. Consequently, if a former widow has remarried after her husband's death, termination of her second marriage by divorce does not obliterate either the fact of her remarriage as a legal event, or its effect of terminating her widowhood as of the date of remarriage.