Louisiana Homestead Tax Exemption - An Unlitigated Constitutional Provision

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There is nothing startling in the observation that amendments to the Louisiana Constitution are frequently no sooner adopted than their application, interpretation or substantive validity are subjected to the judicial process by ever willing litigants. This is particularly true when they embody some provision concerning taxation or other fiscal matters. More remarkable, however, is the fact that one such provision has been a part of our organic law for over fifteen years without having been subjected to the rigors of litigation in a single reported case. It is the purpose of this article to trace the development of the law of the homestead tax exemption from such sources as are available in the absence of case authority.

Louisiana first made provision for tax exemption of the homestead in 1934 by amending Article X, Section 4, of her State Constitution. By so doing, she was following the lead of Texas which had adopted a similar measure in 1932 and became one of fourteen states¹ which have ultimately come to participate in this type of tax program. Originating, as it did, during a period of economic depression, one of the essential purposes of the plan was to protect the small farm or home owner from forfeiture of his holdings in tax delinquency proceedings. Gradual and substantial improving economic conditions have long since relegated such an objective to secondary importance and the continued retention of the exemption must find its justification if at all in other considerations of governmental fiscal policy. It is said that such justification is to be found in the incentive or inducement to home ownership which the exemption creates.² It is not the purpose of this article to discuss the merits of the

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2. See Owen, The Need for Constitutional Revision in Louisiana (1947) 8 LOUISIANA LAW REVIEW 1, 41-47.
exemption. It is sufficient to say that fiscal planners and administrators differ widely in their views on the issue.\(^3\)

One or two other general observations remain to be made. Louisiana’s homestead exemption differs materially from similar provisions in the other states that have adopted such laws. In all other such states the exemption extends to state taxes; in three of them\(^4\) the exemption applies to all taxes, state, local, special district and municipal. Louisiana alone has hit upon a middle ground in extending the exemption to taxes imposed by the states, the parishes, and special districts but not to municipal taxes—except in the City of New Orleans. This exception seems quite properly to have been subjected to criticism by Professor Owen, who has observed: “There seems no valid reason, however, why home ownership should be encouraged in New Orleans and discouraged in Shreveport and Baton Rouge.”\(^5\)

A second respect in which the Louisiana treatment of homestead exemption differs radically from that of other jurisdictions is that involving the reimbursement to the taxing agencies for losses suffered by reason of the exemption—this recoupment being achieved through the device of the State Property Tax Relief Fund. Created by Act 54 of 1934,\(^6\) simultaneously with the exemption itself, this fund, constituted from revenues derived from the state income tax, the alcoholic beverage tax and the public utilities tax, is disbursed on the order of the state treasurer to the various agencies and funds whose revenues are diminished by the operation of the homestead tax exemption. No other state granting a similar exemption makes any such provision for reimbursement.

Turning, now, to the particular provisions of the exemption—it was first adopted, as previously indicated, in 1934 and has since that time been amended five times: First, in 1936 to provide that it be extended to the surviving spouse or minor children of a decedent; Second, in 1942, to make it applicable to two or more tracts of land; Third, also in 1942, to confer power on the legislature to authorize municipalities to provide for homestead exemption from municipal taxation; Fourth, in 1946, to increase

\(^3\) Ibid.
\(^4\) Florida, Oklahoma and Wyoming.
\(^5\) Owen, supra note 2.
\(^6\) The act has been frequently amended. In its present form it exists as La. Act 134 of 1948. Intervening amendatory acts are La. Acts 11 of 1940 (E.S.), 122 of 1940, and 64 of 1944.
the amount of the exemption from $2,000 to $5,000—for a period of five years ending in 1951 where the claimant is a veteran of World War II; and Fifth, and finally, in 1948, when the increased exemption for veterans, just mentioned, was modified to make the five year exemption available for any period of five years—not to be extended beyond 1954.

In its present form the constitutional provision (for the non-veteran homesteader)\(^7\) reads as follows:

Article X, Section 4: “The following property and no other shall be exempt from taxation:

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9. From state, parish and special taxes, the homestead, bona fide, interpreted herein as consisting of a tract of land, or two or more tracts of land with a residence on one tract and a field, pasture or garden on the other tract or tracts, not exceeding one hundred and sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by every head of a family, or person having a mother or father, or a person or persons dependent on him or her for support, (to the value of two thousand dollars) provided that this exemption shall not extend to any municipal or city taxes, save and except in Orleans Parish, and shall in Orleans Parish apply to the State, the general city, the school, the levee and levee board taxes, and the State Treasurer shall be authorized and is directed to reimburse the general or special funds of the State and any of its political subdivisions, police juries, boards, commissions or offices and the City of New Orleans, for any sums which may be lost to the State, its general or special funds and any of its political subdivisions, police juries, boards, commissions, offices and the City of New Orleans, occasioned by reason of the homestead tax exemption herein provided for, out of funds which shall be established and provided for by the Legislature in the Property Tax Relief Fund, said reimbursement to be made pro rata out of said Fund. Provided, that homesteads shall not be exempt from taxes, state, parish, local or special, or from taxes of the City of New Orleans, to an amount greater than the necessary funds available in the Property Tax Relief Fund to make the reimbursement herein

\(^7\) The more liberal provision in favor of veterans, Art. X, § 4 (9b), is identically phrased except for the amount of the exemption and the insertion of the date limitation.
provided, and all provisions of this Constitution and the laws of this State in conflict with this paragraph are hereby repealed. The exemption of homesteads shall extend to the surviving spouse, or minor child or children, of a deceased owner and to the bona fide homestead when occupied as such and title thereto is in either husband or wife, provided that the exemption shall not be extended to more than one homestead owned by the husband or wife."

Since the provisions of Act 109 of 1921 (E.S.), Section 3, require assessors to value and list all real estate on the assessment rolls whether such property is exempt or non-exempt from taxation, it is clear that the duty to make an assessment obtains whether the homestead exemption has application or not. Furthermore, since the exemption is contingent upon the existence of adequate monies in the Property Tax Relief Fund for reimbursement—and may, in no event exceed $2000, the need for assessment is plainly obvious. The assessor's problem, therefore, is one of determining what property is entitled to the exemption. Admittedly, the language of the constitutional provision, above quoted, is fraught with difficult problems of interpretation. Strangely enough, however, in the fifteen years that the provision has been a part of Louisiana's organic law, the courts have not had a single occasion to pass upon the meaning of any of its terms. This is a surprising circumstance to a lawyer and to the casual observer may, perhaps, bear mute testimonial to the wisdom and soundness with which the provision has been administered by the assessors and other taxing officials. More probably, however, the explanation for the dearth of indicia of controversy in this area is to be found in political considerations. The parish tax assessor, holding elective office, is a wholly human individual possessed of no desire to alienate the political affections of his constituents. In such a setting it is inevitable that doubts may be resolved in favor of the taxpayer. The political consideration, ever present in ordinary matters of assessment, is a particularly potent one in homestead exemption diserata since the parish suffers no loss of revenue by its allowance because of the reimbursement provisions of the State Property Tax

9. During the first year of administration of the program the exemption was limited to $1000 because of inadequate funds to reimburse the full amount of the exemption. In recent years, however, the full $2000 has been allowed.
10. This is the opinion of the writer based upon conversations with assessing officials.
Relief program. Another factor, undoubtedly leading to the absence of case materials on the issue, is the comparative insignificance of the sum involved (the amount of the tax on two thousand dollars' worth of valuation), which renders litigation impracticable as a financial matter. In any event, and regardless of reasons, it is certain that the mere absence of court decisions does not mean that the assessors have not encountered problems in connection with the administration of the exemption. The attorney general has, on numerous occasions, been asked to advise assessors—and the tax commission—with reference to a wide variety of problems arising under the exemption. In the course of giving his opinions in answer to such inquiries the attorney general has referred to decisions of the courts interpreting and applying the analogously phrased provisions of Article XI of the State Constitution governing the homestead exemption for the protection of debtors.

It is difficult to set forth any general rules as to the facts and circumstances necessary to establish the exemption of a homestead from taxation. Each case where an exemption of the homestead from taxation is claimed must be determined by its own special facts and circumstances. However, a fair distillation of the conclusions reached by the courts under the homestead exemption from claims of creditors, as well as the opinions of the attorney general under the provision here involved, may be safely undertaken to illustrate how various particularized problems have been dealt with.

"Homestead, bona fide"

One of the first terms to be found in the constitutional provision which suggests need for definition is the phrase “homestead, bona fide.” As a term of general law the word “homestead” is usually taken to mean the dwelling house constituting the family residence, together with the land upon which it is situated and the appurtenances connected therewith. It has both a popular and a legal significance, but its popular and legal meanings are the same. In common acceptance of the term it means the residence of the family, the place where the home is. If the words “bona fide” used in conjunction with the term “homestead” impose any additional requirement, they would seem to mean that the person claiming the exemption must be the owner in good faith of the property claimed as his homestead, and that such person must actually reside thereon with a continuing intention to make it his homestead. In other words, his residence
must be on the property claimed as exempt. As long as a certain lot or parcel of land contains his home and he makes his residence thereon, and it does not exceed 160 acres, that is his homestead.11

**Size, Shape and Character of Tracts**

The exemption is limited to 160 acres of land and the buildings and appurtenances thereon, which includes, under the term "appurtenances," irrigation canals, pumps and machinery. In cases involving farms or tracts in excess of 160 acres, the exemption is apparently to be restricted to the residence and the adjacent 160 acres, with the result that if this property does not equal the full $2000 worth of exemption, no further acreage can be taken into account.12

Prior to the adoption of the 1942 amendment13 authorizing the inclusion of two or more tracts within the homestead, it was said that the exemption extended only to the land actually owned and occupied as a residence and not to another physically separated tract even though the taxpayer owned it and actually cultivated it.14 The attorney general did rule, however, that the mere fact that a public road was located in the middle of one property did not convert it into two separate tracts.15

Since the adoption of the 1942 amendment, however, it is clear that two or more tracts may be included within the exemption, so long as the sum total acreage does not exceed 160 and they are devoted to the designated purposes, that is, "with a residence on one tract and a field, pasture or garden on the other tract or tracts."16 It is also clear that the same owner may include both rural and urban property within the same exemption as, for example, where he lives in a house in town and actually devotes rural property fully and completely to the use or uses required. Similarly, it is possible for a person living in a residence which he owns in the country to claim both that property and a city lot if he devotes the city lot to use as a field, pasture or garden. The attorney general has also alluded to the advisability of the tax commission's adopting rules or regulations to prevent exploitation of the exemption in these circumstances by

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11. St. Mary Bank and Trust Co. v. Daigle, 128 La. 758, 55 So. 345 (1911).
a "designing applicant." He has also stated in this connection that if there are homes on the two or more tracts, the exemption will not extend to more than one of them since the others are not being devoted exclusively and entirely to the required purposes. In the same opinion he also expressed grave doubt whether the exemption should be extended to cover separate tracts where they are located in different parishes except under extenuating circumstances plainly demonstrating compliance with all requirements—to be carefully observed by the tax commission.

A somewhat related question arises where a single tract lies partly in one parish and partly in another. In an early opinion the attorney general stated his opinion to be that there could be no apportionment in such cases, concluding that the exemption applied only to the residence and that part of the land in the parish in which it was situated. In a subsequent opinion by the same attorney general, however, and without referring to the earlier statement, he reached the other conclusion, saying:

"There is no provision in the law that the entire homestead, not exceeding 160 acres, must be located in one parish. We believe that where a man owns and occupies a tract of land as a homestead, bona fide, and the assessment is not more than the amount apportioned for the homestead tax exemption, and the acreage not more than 160 acres, he should be allowed the homestead tax exemption, regardless of the fact that part of the property might lie in one parish and the balance in another.

"The application for homestead tax exemption would, of course, be filed with the assessor of the parish wherein the home is located; then, the taxpayer should furnish the assessor of the other parish with copy of his application filed in the first parish, with necessary proof that the property is in one block and that same is occupied as a homestead, bona fide, the amount of the total assessment, and the number of acres in the whole tract, whereupon the assessor in the second parish should accept an application for a homestead tax exemption, applicable to the property located in the second parish."

18. Id. at 1678.
The latter opinion seems to be the better considered and should be regarded as controlling if for no other reason than that it is the latest pronouncement on the subject. In neither of the opinions is reference made to the language of Act 170 of 1898, Section 11, reading in part as follows: "When a line between two parishes divides a tract of land, or plantation; each portion shall be assessed in the parish in which it lies." Since this statute clearly authorizes the separate assessment, there would seem to be no logical or practical reason why the exemption should not be applied to each part on an apportioned basis.

A number of cases have been referred to the attorney general involving property upon which the owner maintains his residence and also conducts his business. In such cases he has consistently expressed the view that the exemption is applicable but only to the extent of the value of that portion of the premises devoted to bona fide homestead purposes. This, of course, requires that the assessor undertake the additional burden of apportioning and assessing the separate portions of an otherwise integrated property unit. This rule is also said to have application to multi-unit dwellings where the owner occupies one of the units as his residence and rents the remaining unit or units to others.

Owned and Occupied

Although the requirement that the homestead, to be exempt, must, among other things, be "owned and occupied" by the claimant, would appear to be one easily and quickly susceptible of ascertainment, numerous perplexing problems have arisen under it. The language of the exemption seems clearly to require that the claimant both own the property and occupy it as a residence in order to qualify for the tax benefit. Mere ownership without occupancy or occupancy without ownership is insufficient. These two concepts will be considered separately:

Ownership. One of the more difficult questions in this regard arises where the claimant has built a house, which he owns, upon land which he leases from another. In a series of three conflicting opinions, the office of the attorney general ruled first that "Where the home itself is owned bona fide by the exemptioner, and he meets all the other requisites, the exemption extends to such

23. Id. at 1130, 1139.
home, even though the land upon which it is situated is held under lease and not in absolute ownership;"\textsuperscript{24} and next (by the same attorney general and without making any reference to the earlier opinion) that "it would seem that it is necessary for a person to own both the house and lot in order to obtain the homestead tax exemption;"\textsuperscript{25} and, finally a restatement of and specific reference to the first opinion without mention of the intervening contradiction.\textsuperscript{26}

Here again, it seems advisable to follow the view most recently expressed, not only because it is to be taken to supersede any previous inconsistent opinions but because it finds support in the adjudicated court decisions under the analogously worded provisions of Article XI of the Constitution. In the case of \textit{In re Vincent},\textsuperscript{27} a bankruptcy proceeding, United States District Judge Dawkins allowed the bankrupt the benefit of the homestead exemption with respect to a house which he \textit{owned} situated on lands which he \textit{leased} from a school board. It should be pointed out that Article XI exempts enumerated items of movable property in addition to buildings and contains the phrase "whether these exempt objects be attached to a homestead or not," and the bankrupt relied upon this latter phrase to secure the exemption of his house notwithstanding lack of ownership of the land. It was contended on behalf of the creditors, on the other hand, that the quoted phrase, because of punctuation in the article, did not modify the word \textit{buildings}. Significantly, it is submitted, Judge Dawkins said:

"Even if it cannot be said that the expression in this article, 'whether these exempt objects be attached to a homestead or not,' in view of the punctuation, includes buildings and appurtenances, nevertheless, I believe that the policy of the State, as recognized by the jurisprudence of the Supreme Court of Louisiana, justifies a liberal construction in favor of the homesteader."\textsuperscript{28}

A somewhat related problem was dealt with by the attorney general in another opinion\textsuperscript{29} which posed the following set of facts and circumstances:

"The owner of the farm conveys one acre of his eco-

\textsuperscript{24} Id. at 1126.
\textsuperscript{25} Opinions of the Attorney General (1936-1938) 1054.
\textsuperscript{26} Opinions of the Attorney General (1940-1942) 4108.
\textsuperscript{27} 28 F. (2d) 396 (C.C.A. 5th, 1928).
\textsuperscript{28} Id. at 397.
\textsuperscript{29} Opinions of the Attorney General (1940-1942) 4078.
nomic farm unit to a Local Housing Authority, upon which acre the local authority will construct a dwelling to house the operator of the farm unit. The former dwelling which housed the operator of the farm unit is demolished. The standard form of deed used for the conveyance of this one acre of the farm to the local housing authority contains a covenant, running with the land, that so long as the one acre is owned by the local authority, the remaining acreage which is not included within the one acre transferred to the housing authority, will not be used for any purpose other than a farm to be operated or worked upon by a tenant or occupant of the house constructed by the local authority, and that will not be constructed on the farm any other dwelling house. The standard form of deed also gives to the farmer an option, which may be exercised at any time within a period of sixty years from the date of completion of the dwelling unit, to re-purchase the house and acre at the fair value thereof but not less than the unamortized portion of the loan incurred by the local authority thereon. The homestead exemption would be claimed by the farmer only upon that portion of the farm remaining in his ownership after transfer of one acre thereof to the local authority."

The problem was, obviously, whether the farmer who was complying with all other requirements necessary to entitle him to claim the exemption and was enjoying the exemption, lost the right to it merely because he had transferred title to one acre of his farm to a local housing authority for the purpose of constructing thereon a new farm house which would remain in the name of the housing authority until the farmer had paid the farming authority the cost of constructing the new house. This issue was resolved in favor of the farmer and the exemption was granted. The opinion refers, as many of them on this subject do, to the principle of liberality of construction of the exemption saying:

"While tax exemptions are, as a general rule, strictly construed, the purpose of the homestead tax exemption was to grant relief to small home owners, and in order to accomplish this purpose, this Department has, since the enactment of the homestead exemption statute, construed the law as liberally as possible, following the rule announced in Lyons v. Andry, 106 La. p. 360:

30. Id. at 4079.
"The right of homestead exemption is in this state a constitutional right, and the terms by which it is granted should not be narrowed by either the legislature or the courts."

and then concluded that

"Under the facts presented in your letter, it is clearly evident that the farmer in transferring his one acre of land to the local housing authority, has no intention whatever of relinquishing his right to the property for the purposes of occupancy as a residence in connection with his entire homestead; on the contrary, the farmer reserves to himself an option to re-purchase both the one acre and the improvements thereon and binds himself further not to build another residence on any other part of the property owned by him but to use the entire property in connection with his farm. Such a transfer of the property to the housing authority is in the nature of a sale with the right of redemption. In the case of Maxwell v. Roach, 106 La. 123, the Supreme Court held that where it appeared that a conveyance of property in the form of a sale with a right of redemption for cash was mainly intended to secure a debt, the owner of the property was entitled to claim the homestead exemption granted to debtors whose property was seized."

On several occasions, however, the attorney general has refused to extend the principle just discussed to cover the situation in which an individual resides on the property and is in the process of acquiring ownership thereof through the device of a "lease and purchase contract." In this latter type of case, admittedly distinguishable from the one previously discussed, the opinions have relied upon the language of court decisions arising under the homestead debtor provisions of Article XI. A married man, who then owned his home and the property upon which it was situated and enjoyed the homestead exemption, was advised that the benefit would be lost to him in the event he were to transfer legal title to his children of a former marriage even though he retained the usufruct of the property for the remainder of his life. In such a case, it was pointed out, the property would no longer be "owned" by the claimant.

31. Id. at 4080.
32. Opinions of the Attorney General (1940-1942) 4110, 4115. Opinions of the Attorney General (1942-1944) 1679. (All three cases involving vendors which were agencies of the United States Government.)
One final, and troublesome, aspect of the "ownership" problem remains to be considered—and this involves the issue of ownership in indivision, that is, where title to a single piece of property is shared by two or more persons jointly. In one of his first comprehensive opinions\textsuperscript{34} explaining the provisions of the homestead tax exemption, the attorney general, relying upon the uniform and unbroken line of cases forming the jurisprudence under the homestead debtor provisions of Article XI, announced that as a general rule the exemption is inapplicable to property held in indivision. In the same opinion he pointed out that property held by a "set of heirs, one of these heirs living on the place" paying only the amount of rent necessary "to keep up the taxes" was not entitled to the homestead exemption;\textsuperscript{35} and the same answer was given where all the heirs so situated as to title were living on the property. Another situation also discussed in the same opinion\textsuperscript{36} involved land owned by four brothers, one of whom resided on the premises caring for the dependent mother, and again the exemption was considered inapplicable; and at the same time it was also held that an estate of 500 acres, owned in indivision by eight heirs, four of whom resided thereon with their families, was not entitled to the exemption.\textsuperscript{37} In later opinions it has been stated that property owned by a partnership would be regarded as held in indivision and hence not entitled to the exemption\textsuperscript{38} and that joint owners of a duplex, each being the head of a family and residing on the premises, were owners in indivision and thus not entitled to exemption.\textsuperscript{39} The appropriate remedy for owners in these situations is, of course, to seek partition of their undivided interests, thus clearing the way for allowance of the exemption where other requirements are met.

The general rule forbidding homestead exemption to property held in indivision has several important qualifications if it is community property that is being considered. The first of these is that the husband, who has the usufruct of community property, is entitled to claim his homestead exemption on the community property.\textsuperscript{40} The second important qualification is to be found in the constitutional provision itself wherein it is stated

\textsuperscript{34} Opinions of the Attorney General (1934-1936) 1115, 1125.
35. Id. at 1127.
36. Id. at 1128.
37. Ibid.
that "The exemption of homesteads shall extend to the surviving spouse, or minor child or children of a deceased owner." Pursuant to this provision the surviving spouse may be entitled to the exemption although as a literal technical matter title to the premises may at that time be held in indivision with others. This aspect of the problem is more fully discussed in a subsequent portion of this article.

Occupancy. Turning from the concept of ownership to that of occupancy we find that a large number of inquiries which have been considered by the attorney general have involved the principle of "constructive occupancy." These cases involve claimants who, under ordinary circumstances, would be clearly entitled to the exemption by reason of ownership and occupancy of the requisite type of property but who, because of the requirements of their employment, are required to leave the homestead and take up residence at another place for varying periods of time. Typical of this class of cases was that involving an army officer who owned property in the City of New Orleans which had been granted the exemption. Upon being summoned to active duty he and his wife took up their residence at Camp Shelby in Mississippi, turning the New Orleans property over to relatives who occupied it rent-free for the purpose of preservation and protection during the homesteader's absence while in the service. Under these circumstances it was held that the officer continued to be entitled to the exemption, the New Orleans premises being his "domicile" in any event and his absence therefrom being at the direction of the armed forces and not of his choosing. This principle, enunciated by the attorney general in an opinion dated May 31, 1941, was later codified by the legislature's adoption of Act 309 of 1942 which eliminated the residence requirement for homestead exemption in the case of all military personnel while in the services "during the present war and its duration." A similar acquiescence in the constructive satisfaction of the "occupancy" requirement has been indulged in the case of state employees owning homes elsewhere who had been required to move to Baton Rouge because of their employment by the state, as well as cases involving private employment. In these cases it is always presumed that the homestead is available for occupancy by the temporarily absent claimant—as for use on holidays or vacations—and that the

41. Opinions of the Attorney General (1940-1942) 4088.
42. Id. at 4092.
premises are not rented to others. These rulings, while covering exceptional circumstances, seem to accord with the general law on the subject in most jurisdictions. In the frequently-cited case of Lyons v. Andry,44 the Supreme Court of Louisiana sustained the claim of homestead (under the debtor provisions of the Constitutions of 1879 and 1898) in a case where the claimant’s house had been destroyed by storms in 1893 and where subsequent to that time (apparently for 6 or 7 years) he had continued to cultivate it, but lived with his son on the latter’s leased premises “about three-quarters of an acre” from the claimant’s property. Throughout this period another son of the claimant, found to be a dependent, occupied a very small shanty on the homestead premises.

A more doubtful situation was dealt with in the attorney general’s opinion dated January 24, 1942,45 where it was said that state employees moving to Baton Rouge were entitled to the new homes exemption of Paragraph 11 of Section 4 of Article X (since repealed) even though they were allowed to retain voting residence in the parishes from which they came. Although there is little question of their ownership and occupancy in such cases, there would seem to be real doubt concerning the bona fides of their intent to make the premises their actual homestead.

Head of Family or Person Having Dependents

Even though the claimant may “own” and “occupy” the premises as his “homestead, bona fide,” he nevertheless fails to qualify for the exemption unless, in the language of the constitutional provision, he is a “head of a family, or person having a mother or father, or a person or persons dependent on him or her for support.” A single exception from this requirement (to be discussed later) is that expressed in the provision itself in favor of “the surviving spouse, or minor child or children of a deceased owner.” It is first to be noted46 that the requirement is in the alternative, that is, the claimant must be either the head of a family or a person having a mother or father, or a person or persons dependent upon him for support. He need not be both. Whether there is any real difference between the two classes of claimants may be the subject of some conjecture—since the term “head of a family” would in most cases be embraced within the

44. 106 La. 356, 31 So. 38 (1901).
45. Opinions of the Attorney General (1940-1942) 3879.
46. As observed in Opinions of the Attorney General (1934-1936) 1115, 1121.
common understanding of the alternative phrase. The Supreme Court of Louisiana, considering the identically worded provision of Article XI, did point to one situation in which a difference might obtain, and at the same time laid down some definitive limits of the term “head of a family” in *Whyte v. Grant,* where it said:

“Although our opinion has been that the homestead exemption applied only to the homestead owned by a person having another person or other persons dependent upon him or her for support, we cannot imagine what could have been the purpose of changing the language of the law so as to include expressly ‘every head of a family,’ unless it was thought by the framers of the Constitution that one might be the head of a family of which no member depended upon the head for support. And we can well imagine such a case. For example, the father, or widowed mother, of a family of minor children possessed of a fortune, would be, in a sense, the head of the family, even though no one was dependent upon him or her for support; and his or her homestead might be held exempt from seizure and sale, under the strict letter of Article 244 of the Constitution.

“But we do not consider the plaintiff in this case, in any sense, the head of the family composed of herself and her major, self-supporting son. Both members of the family may regard her as the head of the family, but the law does not. She has neither responsibility nor parental authority over the only other member of the family. To hold that she is the head of that family, merely because, perhaps, she and her son so regard her, would be putting as strained a construction upon the language of the law as if we should hold that she is entitled to the homestead exemption because she is depending upon herself for support; for the law does not expressly grant the homestead exemption to one having another person dependent on him or her for support, although that is surely what it means. The opinion generally accepted is that, to be the head of a family, one must either have a responsibility (i. e., at least a natural or moral obligation) to support another person, or have parental authority over another member of the family.”

Neither of the terms, “head of a family” or “person having

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47. 142 La. 822, 77 So. 643 (1918).
48. Ibid.
a mother or father, or a person or persons dependent on him or her for support" embraces a widow or widower who has no dependents, unless it falls within the survivorship clause of the exemption, nor do they cover a spinster or bachelor who is without dependents for support.\textsuperscript{49} An opinion to the contrary, holding a widow entitled to the exemption where she was living in her own home and who was dependent for support upon her two daughters, is so clearly contrary to the language of the constitutional provision and the many other opinions on the subject it should be disregarded.\textsuperscript{50} In an opinion dated February 12, 1941,\textsuperscript{51} the attorney general considered the case of a brother and sister, both single, each of whom owned property. Although facts upon which to predicate a definite opinion were not clearly set forth, the opinion reads in part as follows:

"It would appear from your letter, in which you state your physical condition, that you might be dependent for support on your brother, in which case, he could claim the homestead exemption, because of that fact, on his property if you are actually living on that property. If you are not living on that property, of course, he could not claim the exemption, because such exemption is only in favor of the bona fide owner of the land, which must be occupied as a homestead by such person."\textsuperscript{52}

Several of the Attorney General's Opinions have dealt with the question of the availability of the exemption where the property is owned by the wife. Normally, of course, the husband, during marriage, is regarded by the law as the head of the family. However, in an opinion dated March 13, 1935,\textsuperscript{53} the attorney general said:

"Where a married woman is the owner of the property claimed as a homestead, and it appears that the support of the family actually depends on her, because of some extraordinary infirmity of the husband, she is entitled to the benefit of the exemption. Baker v. Richardson, Man. Unrep. Cas. 265. The wife (widow) does not lose her homestead by marrying an impecunious man, as there may then be

\textsuperscript{49} Opinions of the Attorney General (1934-1936) 1111, 1125, 1147.
\textsuperscript{50} Id. at 1130.
\textsuperscript{51} Opinions of the Attorney General (1940-1942) 4098.
\textsuperscript{52} Id. at 4099.
\textsuperscript{53} Opinions of the Attorney General (1934-1936) 1115.

"'Notwithstanding a married woman is living with her husband, she may be entitled to claim an exemption as the head of a family where from necessity she has been compelled to assume the burdens and responsibilities which belong to such headship.' 25 C. J. p. 26, Sec. 32 e."

Note the emphasis placed upon the fact of the husband's dependency. In a later opinion, dated March 25, 1935, he said:

"Where a husband and wife with their family are living on a farm which is the separate property of the wife, and the husband cultivates said farm for the support of the family, it is our opinion that the wife would be entitled to the homestead exemption. In such an instance, the wife is compelled to assume burdens and responsibilities which belong to the head of the family, and she would therefore be entitled to the exemption.

"However, where the property is urban property and the husband works in a store for a salary on which he could reasonably support his family, we do not believe the homestead exemption should be allowed on the separate property of the wife. But, if the salary received by the husband is so small that a degree of responsibility for the support of the family would necessarily devolve upon the wife, in that case the exemption should be allowed. These cases should be submitted to the Louisiana Tax Commission, and the Commission should determine whether or not the exemption should be allowed after they have considered all of the facts in connection with the case."

Note, again, the inferential importance of dependence. And on April 18, 1935, in answer to a query reading as follows:

"I have a friend whose wife owns one half of her residence, the other half being owned by her six children. Three of these children are living in the home with this friend and

54. Id. at 1125.
55. Id. at 1144.
56. Id. at 1145.
57. Id. at 1147.
his wife and are dependent upon them. Does this case come within the Homestead Exemption?"\(^\text{58}\)

he stated:

"We are of the opinion that there is no question but that one homestead exemption is allowed in this case. It should be allowed under the wife's assessment."\(^\text{59}\)

It is to be noted that there was no consideration of actual dependency by the husband upon the wife in the latter case, nor of the point of ownership in indivision.

Unquestionably, of course, a corporation cannot be regarded as the head of a family, and consequently land which is owned by such an organization is not entitled to the exemption even though it appears that the corporation is a one-man affair created by an individual who has incorporated all his property—and who, if such action had not been taken, otherwise meets all the requirements for exemption.\(^\text{60}\)

Although the attorney general has had exceedingly few occasions to consider the proper meaning of the term "dependent" under the exemption, the adjudicated cases which have arisen under Article XI indicate in broad outline that the term extends to those persons as to whom the claimant is under a legal duty to support. Thus it was held in *Prudential Insurance Company v. Guillory*,\(^\text{61}\) that neither foster children, nor an adult son who was confined in a state hospital for the insane were dependents of the claimant. Similarly in *Askew v. Parker*,\(^\text{62}\) it was held that the illegitimate child of a son of the claimant, not being entitled to support as a matter of law, was not a dependent.

Before leaving the topic of head of family and person with dependents, some consideration must be given to the concluding sentence of the constitutional provision, to which previous reference has been made. This provision reads as follows: "The exemption of homesteads shall extend to the surviving spouse, or minor child or children, of a deceased owner and to the bona fide homestead when occupied as such and title thereto is in either husband or wife, provided that the exemption shall not be extended to more than one homestead owned by the husband or wife." It was previously indicated that this sentence creates

\(^{58}\) Id. at 1148.

\(^{59}\) Id. at 1148.

\(^{60}\) Opinions of the Attorney General (1940-1942) 4103, 4119.

\(^{61}\) 175 La. 1058, 145 So. 6 (1932).

\(^{62}\) 131 La. 753, 60 So. 233 (1912).
one of the two exceptions to the general rule forbidding the extension of the exemption to property held in indivision. Thus the survivor is entitled to the benefits of the exemption notwithstanding the fact that upon the dissolution of the community by death, he or she then holds the property in indivision with the heirs of the deceased.

But what of the normal requirement of dependents? Certainly the language of the Constitution imposes no requirement in such circumstances. The attorney general in two opinions has concluded, on the basis of the jurisprudence of the supreme court cases arising under Article XI, that where the survivor is a widower he may claim the exemption only if he has dependents; 63 but, that if it is the widow who survives, she gets the exemption whether she has dependents or not, 64 citing the cases of Baker and Company v. Davis, 65 and Succession of White, 66 as supporting these two conclusions, respectively. It is submitted that there is no proper basis for the distinction thus drawn. In the first place, and admitting that the jurisprudence under Article XI relating to the homestead exemption for the protection of debtors, is, by analogy, applicable in aid of the proper construction and interpretation of general terms of similar import in the homestead tax exemption provision, there are fundamental differences in the very language of the survivorship clauses of the two provisions which make interpretation by analogy an exceedingly risky business. In the second place, fundamental differences in the nature of the purposes or objectives of the two provisions forbid the complete application by analogy of the jurisprudence under one provision from being arbitrarily applied to the other. And finally, in the light of statements to be found in the language of the Supreme Court's decisions, it is extremely doubtful if, confronted today by the same issue presented in the Baker case, the court would follow that decision.

Elaborating, very briefly, upon these points:

First: The survivorship clause of Article XI reads simply: “The benefit of this exemption may be claimed by the surviving spouse, or minor child or children of a deceased beneficiary.” (Italics supplied.) Certainly this language is susceptible of the interpre-

63. Opinions of the Attorney General (1940-1942) 4112.
64. Id. at 4101.
65. 148 La. 215, 78 So. 473 (1918).
66. 170 La. 403, 127 So. 883 (1930).
tation consistently given it by the court, namely, that the survivor who has no dependents is entitled only to claim exemption from the very debts against which the decedent himself could have asserted the bar of the exemption—not newly created or acquired ones of the claimant alone. The jurisprudence, as will be demonstrated, goes no further than this. With this in mind, contrast the importantly different language of the survivorship clause of Article X which reads as follows: “The exemption of homesteads shall extend to the surviving spouse, or minor child or children, of a deceased owner and to the bona fide homestead when occupied as such and title thereto is in either husband or wife, provided that the exemption shall not be extended to more than one homestead owned by the husband or wife.” (Italics supplied.) This language, it is submitted, clearly contemplates a continuing extension of the exemption to the homestead even though the tax obligation thereon will accrue after the decedent’s death and will be incurred by and in the name of the survivor—the very basis on which the court has refused to extend the homestead exemption for the protection of the debtor as contained in Article XI.

Second: The second observation (that differences in purpose justify differences in interpretation) flows naturally from the first, both upon the basis of the language differences of the two provisions as well as from the decisions interpreting and applying the exemption contained in Article XI. The Supreme Court of Louisiana in the case of Succession of White, in the case of Succession of White, discerned the purpose and resulting consequences of Article XI to be as follows:

“The whole story of the exemption of the homestead is that the obligation of the debtor to those whom he owes the duty to support is a higher obligation than the payment of his debts. The purpose of the framers of the law was to secure a home beyond the reach of financial misfortune, around which gather the affections of the family; the greatest incentive to virtue, honor, and industry. Herbert v. Mayer, 48 La. Ann. 938, 20 So. 171. This purpose would certainly be defeated if we should hold that the exemption in favor of a husband and father was not transmitted on his death to his widow and children. We cannot so hold. On the contrary, our conclusion is that it is only where a widow seeks to claim the homestead exemption against her own

67. Ibid.
debts that she must do so as the head of a family or have a dependent or dependents; that these conditions are not required when she claims the exemption against debts contracted by her husband or by the marital community-debts against which the husband, himself, could have successfully claimed the exemption; that in such a case the exemption inures to her benefit as the surviving spouse upon the death of her husband, the original beneficiary under the constitutional article."

Clearly the type of obligation against which relief is provided by Article X on the other hand, is only of one character—that of tax liability. Quite clearly also the language of the constitutional provision makes it abundantly clear that the exemption is to be conferred whether the liability was incurred at a time when the land was owned by the decedent or after it has passed on to the survivor—"and title thereto is in either husband or wife," as the provision so clearly states.

Third: Insofar as the jurisprudence under Article XI supports the view expressed by the attorney general, the following may be said:

(1) It is true that in the case of Baker & Co. v. Davis, the survivor, a widower without dependents, was denied the exemption under Article XI, the court rejecting his claim that the survivorship clause dispensed with the need for dependents, saying:

"In order to recognize defendant's claim, it would be necessary to interpret this clause of the Constitution as meaning that every widow and widower, by the mere fact of once having been married, would forever be entitled to the homestead exemption though no one were dependent upon her or upon him for support. We do not think that the quoted clause, when construed in connection with the first paragraph of article 244, conveys any such meaning; on the contrary, we believe that the surviving spouse must be one having a mother or father or a person or persons dependent upon him or her for support, and that its main purpose is to entitle the surviving spouse, having dependents upon him or upon her, to claim the benefit of homestead on property belonging to the community and owned by the survivor in indivision with the heirs of the deceased."
But, as pointed out by the court in its later decision in *Succession of White*, “the debt against which the exemption was urged in that case was the personal debt of the claimant and not the debt of the marital community.”

(2) In the *Succession of White* case the court did allow the exemption where it was shown that the debt against which it was asserted was one validly incurred by the marital community—against which the husband could have invoked the bar of the exemption had he lived—and the surviving wife was permitted to do so even though she had no persons dependent upon her. There is no intimation that the sex of the survivor has anything whatsoever to do with the applicability of the exemption; rather it is a question of the character of the debt.

(3) In all of the other cases which have involved claims for exemption by widows and widowers notwithstanding dicta in the opinions concerning the need for dependents—it will be found that the exemption was never denied on that ground alone when a debt of the type involved in *Succession of White* was presented.

**Forfeiture and Redemption**

A number of attorney general’s opinions treat the problems of forfeiture, adjudication to the state and redemption of homestead property. Their substance may be briefly summarized as follows: The exemptioner’s failure to pay taxes on property (movable or immovable) other than his homestead does not deprive him of the right to claim his exemption provided all requirements are met. Homestead property which has an assessed valuation in excess of the $2000 exemption may be advertised and sold for the amount of taxes due on the excess valuation. It has been suggested, however, that if the homesteader owns other property than the exempt plot, it should be advertised for sale first if such non-exempt property will bring enough to satisfy the amount of taxes due. It has also been ruled on several occasions that the homesteader is entitled to the exemption for the year in which the tax sale or adjudication to the state occurs provided the sale takes place sufficiently late in the year to permit action on the application.

71. 170 La. 403, 407, 127 So. 883, 884 (1930).
73. Ibid. Opinions of the Attorney General (1938-1940) 1086.
Since the homestead exemption is not applicable to drainage and levee taxes, there may be an adjudication to these types of taxing districts in the event these are the only delinquent taxes involved. Where, however, state and parish taxes are also included in the delinquency, the property should be adjudicated to the state.\textsuperscript{76} In the course of adjudication proceedings, as previously indicated, the tax collector should apply the amount received on account of exemption from the treasurer out of the Property Tax Relief Fund, as an acquittance against the property and proceed to adjudicate the property to the state for the balance only.\textsuperscript{77}

Following adjudication to the state and the lapse of one year it was improper prior to the enactment of Act 111 of 1938\textsuperscript{78} to continue to assess or show a homestead exemption for the property.\textsuperscript{79} With the adoption of that act, however, it has become the duty of the assessor to continue to assess the property “during the period allowed by existing law for its redemption”—a period fixed by Act 72 of 1928 to be “as long as the title thereto is in the State or in any of its political subdivisions.” Hence the state is regarded as no longer having an absolute title following the former period of one year allowed for redemption, but an inchoate one with a right to sell the property at a subsequent sale. Hence it has been ruled that since the property must continue to be assessed in the name of the tax debtor, it is proper to allow the homestead exemption, provided the other requirements are satisfied, and consequently the taxing district may continue to participate in the receipt of funds from the Property Tax Relief Fund during this period.\textsuperscript{80}

On the redemption side of the picture it has been repeatedly and consistently held that the tax debtor who has met all other conditions of the exemption is entitled to credit therefor upon redeeming his property although as a technical matter he has not actually owned it during the period it has been held by the state following adjudication.\textsuperscript{81} This, of course, complements the practice just mentioned, and prevents the taxing districts from

\textsuperscript{76} Opinions of the Attorney General (1936-1938) 1058.
\textsuperscript{77} Opinions of the Attorney General (1936-1938) 1059.
\textsuperscript{79} Opinions of the Attorney General (1936-1938) 1059.
\textsuperscript{80} Opinions of the Attorney General (1942-1944) 1668.
collecting twice on the same assessment—once from the Property Tax Relief Fund and again from the homesteader.

There remain, for rather brief consideration, a few other aspects of the homestead exemption which, though important, are not so controversial or difficult as those previously discussed.

The first of these may be designated “the tax day problem.” In one of the early opinions on the subject the attorney general first ruled that the exemption granted to an owner who met all the necessary qualifications on January 1, did not carry over to the mortgagee who thereafter and during the same year acquired title to the premises by foreclosure proceedings against the mortgagor-exemptioner. This opinion was subsequently reversed in the light of the contrary rule of law which has been consistently stated in the jurisprudence of the supreme court. In New Orleans Bank & Trust Company v. City of New Orleans, the court succinctly states the rule as follows: “If the property is exempt on the tax day (January 1st), it is not liable for taxes during that fiscal year, although it afterwards goes into the hands of those not exempt.”

Strict adherence to the principle thus enunciated would, in a reversed situation, operate to deny the otherwise bona fide homesteader of the benefit of the exemption if he did not acquire title to the premises until after January 1, or, owning the property, did not occupy the house—or perhaps even complete its construction for occupancy until after such date. However, the attorney general in several opinions has expressed the view that the exemption should be granted in such circumstances provided such acquisition of title or occupancy takes place before the assessor makes his report to the state treasurer.

Another question, frequently the subject of inquiry to the attorney general, but not intrinsically difficult, is what taxes are subject to the homestead exemption. In his opinions in response to a score or more of such inquiries over the years, he has consistently advised that the exemption applies to all taxes, regular or special which are levied by the state, the parishes or political subdivisions except municipal taxes outside.

84. 176 La. 946, 147 So. 42 (1933).
85. 176 La. 946, 958, 147 So. 42, 45 (1933).
the Parish of Orleans. The exemption does not have application to acreage, drainage or levee taxes.

In New Orleans, alone among the municipalities of the state, the homestead exemption applies to municipal taxes. The City of New Orleans is treated as the Parish of Orleans and is on a parity with all other parishes of the state for the purposes of the exemption and reimbursement from the Property Tax Relief Fund, since the city is territorially coextensive with the parish. And in New Orleans, where municipal taxes are levied on 85% of the valuation assessed for state purposes, the $2000 homestead exemption is to be deducted from the full valuation and the tax levied on 85% of the balance, NOT by deducting 15% from the full valuation and subtracting the $2000 exemption from the remainder.

CONCLUSION

Here, then, in substance, is the law of the homestead tax exemption in Louisiana. Certainly it must be conceded that the problems encountered in its administration are as complex—as litigious—as those involved in the normal grist of cases to be found on the dockets of the courts. Yet, how is it to be explained that fifteen years of administration of such a Pandora's Box of potential law suits has failed to produce a single reported decision? A partial answer to this question was undertaken in the opening pages of this article, and the theory advanced that triviality of the sum involved, or political considerations may account for the phenomenon. Reference to the latest available statistics discloses that the amount of money is in excess of thirty-two dollars per year for the average taxpayer. Many lawsuits have been filed involving smaller sums, even where it did not represent an annual exaction. This renders more plausible the

91. Pages 408 and 409, supra.
92. Thirty-First Annual Report of the Louisiana Tax Commission for the year 1947. Table No. 70, pp. 98-100 discloses that for the year involved, 297,012 applications were granted, resulting in the exemption of $9,526,284.70 in taxes.
political considerations to which previous reference was made. At the outset of this article, the writer foreswore any consideration of the merits of the exemption, but if that issue is to be re-examined, either in isolation or as part of the larger question current among fiscal planners—total abandonment of the property tax—this might be food for thought.