250.0010

(916) 323-7715

August 26, 1983

Dear Ms. :

This is in response to your inquiry concerning Assessors' Handbook AH 264, College Exemption, and the requirement therein at page 3 that an educational institution be organized as a California corporation pursuant to the provisions of the Corporations Code and Division 21 of the Education Code (commencing at § 29001).

As of March 1973 when the Handbook was issued, Article XIII, Section 1a of the California Constitution, which provided for the college exemption, stated:

> (Old) Section 1a. Any educational institution of collegiate grade within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its ground within which its buildings are located, its securities and income used exclusively for the purposes of education.

As the Section referred to educational institutions within the State of California, it was interpreted to apply only to California educational institutions, hence the requirement that an educational institution be organized as a California Corporation.

By amendments adopted November 5, 1974, however, Article XIII, Section 1was repealed and new Article XIII, Section 3(e) was enacted to provide for the college exemption:

(New) Section 3(e). Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.

With the deletion of the phrase "within the State of California" from Section 3(e), together with the United States Supreme Court decision in Whyy v. Glassboro (1968), 393 U.S. 117, Section 3(e) was construed by us to apply to both California and non-California educational institutions meeting all the requirements for the exemption, it having been concluded that it would be a denial of equal protection to preclude exemption to non-California educational institutions in instances in which their respective states' incorporation requirements for nonprofit educational institutions were substantially similar to those of California's. See Ragan et al. v. Humboldt County (1973), 8 Cal. 3d 322, wherein the California Supreme Court held that a statutory provision that only California documented vessels would be taxed at a reduced rate violated the right of owners of vessels documented in other states to equal protection of the laws guaranteed under the United States Constitution and was, therefore, invalid. Such construction of Section 3(e), then, had the effect of negating the requirement that an educational institution be organized as a California corporation.

As indicated, other states' incorporation requirements for nonprofit educational institutions must be substantially similar to those of California's. And the institution's articles of incorporation should contain a statement of educational purposes and indicate that the institution is a nonprofit one. And, of course, the institution must require for regular admission the completion of a four-year high school course or its equivalent; must confer upon its graduates at least one academic or professional degree, based on a course of study of two years in liberal arts and sciences or of three years in the professions; and must not be conducted for profit.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Mr. Carl S. Rush, Assessor
Mr. Vance Price