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OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION of EVELLE J. YOUNGER Attorney General PHILIP M. PLANT Deputy Attorney General	No. CV 74/257 MAY 14, 1975

THE HONORABLE JOHN B. HEINRICH, SACRAMENTO COUNTY COUNSEL has requested an opinion on the following two questions:

1. What is the meaning of "misfortune or calamity" as used in Revenue and Taxation Code section 155.13?

2. Do local agencies have authority under Revenue and Taxation Code section 155.13 to limit reassessment to taxpayers experiencing specific types of misfortunes or calamities such as loss by fire?

The conclusions are:

1. "Misfortune or calamity" as used within Revenue and Taxation Code section 155.13 encompasses any type of adversity which befalls one in an unpredictable manner.

2. Local agencies do not have authority under Revenue and Taxation Code section 155.13 to limit reassessment to taxpayers experiencing specific types of misfortunes or calamities.

ANALYSIS

Revenue and Taxation Code section 155.13 was enacted in 1973 but its operative date was contingent upon the adoption of Assembly Constitutional Amendment No. 30 of the 1973-1974 Regular Session. Assembly Constitutional Amendment No. 30 was placed on the ballot for the June 4, 1974 primary election as Proposition 4 and was adopted by the electorate at which time Revenue and Taxation Code section 155.13 simultaneously became operative.

Proposition 4 amended Article XIII, Section 2.8 of the California Constitution in such a manner as to grant power to the Legislature to authorize assessment or reassessment of property damaged or destroyed after the lien date by a misfortune or calamity. Section 2.8, as it read prior to this amendment, granted power to the Legislature to authorize such assessments or reassessments only in instances where the misfortune or calamity was major and only when the damaged or destroyed property was located in an area or region which was subsequently proclaimed by the Governor to be in a state of disaster. The original section 2.8 appears below with the provisions deleted by the 1974 amendment printed in strikeout type.

> "The Legislature shall have the power to authorize local taxing agencies to provide for the assessment or reassessment of taxable property where after the lien date for a given tax year taxable property is damaged or destroyed by a ~~major~~ misfortune or calamity ~~and the damaged or destroyed property is located in an area or region which was subsequently proclaimed by the Governor to be in a state of disaster.~~"

Revenue and Taxation Code section 155.13 represents the legislative exercise of the power conferred by section 2.8 as amended in 1974. It generally spells out procedures whereby property damaged or destroyed by misfortune or calamity can be reassessed. For purposes here relevant, it is only necessary to refer to the first paragraph of section 155.13 which reads as follows:

> "Notwithstanding any provision of law to the contrary, the board of supervisors may, in any year, by ordinance, provide that every person who at 12:01 a.m. on the immediately preceding March 1 was the owner of, or had in his possession, or under his control, any taxable property, or who acquired such property after such date and is liable for the taxes thereon for the fiscal year commencing the immediately following July 1, which property was thereafter damaged or destroyed, without his fault, by a misfortune or calamity, may,

within the time specified in the ordinance, apply for reassessment of such property by delivering to the assessor a written application showing the condition and value, if any, of the property immediately after the damage or destruction, which damage must be shown therein to be in excess of one thousand dollars ($1,000). The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit."

The first inquiry to be dealt with herein is directed toward the meaning of the phrase "misfortune or calamity" as used in the above quoted portion of section 155.13 (and as used in Article XIII, section 2.8 as amended in 1974).

This phrase has not been construed by the courts. Further, the phrase "major misfortune or calamity" as it appeared in section 2.8 prior to the 1974 constitutional amendment (and in Rev. and Tax. Code sec. 155.1 enacted in implementation thereof) has not been judicially construed either.

Moreover, the phrase "misfortune or calamity" is not a phrase with a technical meaning associated with matters of state or federal taxation nor is it defined elsewhere by statute. Accordingly, unless otherwise intended or indicated, this phrase should be given its "ordinary meaning and receive a sensible construction in accord with the commonly understood meaning thereof". County of Los Angeles v. Frisbie, 19 Cal.2d 634, 642 (1942).

The popular meaning associated with the word "misfortune" is "adverse fortune" or "bad luck". The Random House Dictionary of the English Language (1966). Synonyms are "mischance" or "mishap". Id. "Fortune" as used in the instant context is defined as "chance" or "luck". Id. From the foregoing, it is plain that "misfortune" is commonly understood to signify adversity that befalls one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it. Black's Law Dictionary (4th ed., 1951).

The addition of "calamity" as an alternative to "misfortune" in the phrase "misfortune or calamity" adds little. The popular definition of "calamity" is "a great misfortune; disaster". The Random House Dictionary of the English Language (1966); Black's Law Dictionary (4th ed. 1951). As so defined, "calamity" becomes but a form of "misfortune" and the definition of the latter term is necessarily inclusive of the former.

Having thus concluded that the commonly understood meaning of the phrase "misfortune or calamity" signifies adversity that befalls one in an unpredictable manner, we must test this meaning against the apparent scope and purpose of section 155.13. Words "must be construed in context, keeping in mind the nature and obvious purpose of the statute" West Pico Furniture Co. v. Pacific Finance Loans, 2 Cal.3d 594, 608 (1970), quoting from Johnstone v. Richardson, 103 Cal.App.2d 41, 46 (1951).

It is apparent from a reading of 155.13 in its entirety that its objective is to afford financial relief to property owners whose property has been damaged or destroyed after the lien date through no fault of their own. The construction of "misfortune or calamity" discussed above is consistent with this objective in that it would encompass generally all types of adversity which were chance in nature and which would therefore appear a proper basis for financial relief in the form of reassessment.

This construction is also consistent with judicial construction of the federal statutory provisions relating to an analogous federal income tax casualty deduction. The Internal Revenue Code provides a deduction for losses arising from "fire, storm, shipwreck, or other casualty". 26 U.S.C. § 165(c)(3). "Casualty" is defined for purposes here relevant as "an unfortunate accident" or a "mishap". The Random House Dictionary of the English Language (1966). Indeed, "misfortune" is listed as a synonym to "casualty" in Webster's New International Dictionary (2d ed. 1934). It is evident from the foregoing that the same element of chance or unpredictability is attributable to "casualty" as is attributable to "misfortune or calamity". For this reason, federal decisions construing "casualty" as used within 26 U.S.C. § 165(c)(3) can be helpful.[1]

A "casualty" as used in this body of federal law has been defined as "an accident resulting from an unknown cause and occurring unexpectedly, suddenly, without being foreseen and without design" Tank v. C.I.R., 270 F.2d 477, 482 (6th Cir., 1959) and authorities cited therein. While a detailed discussion of what is and is not a "casualty" as above defined can be

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1. A limitation upon the scope of the term "casualty" as used within 26 U.S.C. § 165(c)(3) does arise through the application of the rule of ejusdem generis. Thus, the casualty must be of similar character to a fire, storm or a shipwreck. See generally 5 Mertens' Law of Federal Income Taxation § 28.57. However, for purposes of assessing the meaning of "casualty" generally, this limitation should be disregarded.

found in 5 Mertens' Law of Federal Income Taxation § 28.57, it is clear that it embraces just about any loss arising through the action of natural physical forces so long as the element of unexpectedness is present. Thus the analogous federal decisions construing the word "casualty" support the previously described definition of "misfortune or calamity" as adversity that befalls one in an unpredictable manner.

It should be noted that section 155.13 requires that the "misfortune or calamity" result in "damaged or destroyed" property which came about "without . . . [the owner's] fault". As noted in a prior opinion of this office, the words "damaged or destroyed" as used in the comparably worded section 155.1 of the Revenue and Taxation Code does not encompass enconomic loss in the absence of physical injury. 55 Ops.Cal.Atty.Gen. 412 (1972).

The second question to be addressed herein is whether local agencies have authority under Revenue and Taxation Code section 155.13 to limit reassessment to taxpayers experiencing specific types of misfortunes or calamities. It is concluded that section 155.13 does not authorize the local agencies to provide for reassessment only in instances of specific types of misfortunes or calamities.

Section 155.13 provides that the local board of supervisors may by ordinance "provide that every person who . . . was the owner of, . . . any taxable property, . . . which property was thereafter damaged or destroyed, without his fault, by a misfortune or calamity, may, . . . apply for reassessment . . . ." A fair reading of this language leads to the conclusion that the Legislature has authorized the local board of supervisors to provide for reassessment in the circumstances spelled out therein and nothing more. There is nothing to suggest that the Legislature thereby authorized the local board of supervisors to permit reassessment in only certain of the situations spelled out therein. To the contrary, the great detail in which procedures, limitations and terms are spelled out in section 155.13 suggests that no discretion was intended to be conferred upon the local board of supervisors to limit the implementation of such a reassessment. If the local board of supervisors by ordinance provides for reassessment, it must allow reassessment to all property owners whose property has been "damaged or destroyed, without his fault, by a misfortune or calamity" without qualification.

In addition to the fact that the above construction of section 155.13 is the only construction possible without doing violence to the reasonable meaning of the language used therein, it should be noted that this construction is most compatible with the uniform operation of the property taxation system statewide. To authorize each local board of supervisors

to specify what particular types of misfortunes or calamities would justify reassessment would result in inconsistent applications of the reassessment provisions between counties with a resultant lack of uniformity which would be at least undesirable and at most productive of possible equal protection problems. It is the rule that in construing a statute the court "must presume that the Legislature intended to enact a valid statute, and adopt an interpretation that, consistent with the statutory language and purpose, eliminates doubt as to its constitutionality". Charles S. v. Board of Education, 20 Cal.App.3d 83, 94 (1971).

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September 11, 1996

No. 96/59

TO COUNTY ASSESSORS:

DEFINITION OF THE TERM "FAULT" IN SECTION 170 OF THE REVENUE AND TAXATION CODE

Section 170 of the Revenue and Taxation Code authorizes county boards of supervisors to enact ordinances to provide for reassessment of property that has been damaged or destroyed by a misfortune or calamity. Subdivision (a) of §170 states that "[n]otwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein." (Emphasis added.)

The statute further requires that the damage or destruction must have been caused by either "a major misfortune or calamity in an area or region subsequently proclaimed by the Governor to be in a state of disaster" or, alternatively, by a "misfortune or calamity." The operative terms are "misfortune or calamity." Section 170, as enacted, was based on former §155.13, which also required that eligibility for relief be contingent on whether the owner was at fault.

We have received several questions asking whether "fault" in this context requires an intentional act or whether mere negligence would suffice.

As explained below, we believe that "fault" as used in Revenue and Taxation Code §170 (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) encompasses acts or omissions involving some degree of willfulness and foreseeability. At a minimum, "fault" means "willful negligence," but not "ordinary negligence."

Construction of the Word "Fault"

The legislative history of both §155.13 and §170 does not reveal any indication of legislative intent regarding "fault." In reviewing the precedent opinions we found no instances in which the term "fault" was defined. A search of case law turned up only one case discussing a building owner's entitlement to a reduced assessment of its property due to misfortune or calamity. The court in that case, *T. L. Enterprises, Inc.* v. *County of Los Angeles* (215 Cal.App.3d 876, 880 (1989)) held that the event causing the loss must be distinct, out of the ordinary, unforeseeable, and beyond the control of the owner. However, the concept of fault was not discussed.

In 1975 the Office of the Attorney General was asked to construe the meaning of "misfortune or calamity" as used in former §155.13 (58 Op. Att'y. Gen. 327 (1975)). The opinion determined that a "calamity" was a type of misfortune and, in referring to analogous federal law, found that the terms "casualty" and "misfortune" were synonymous. A review of the federal decisions interpreting the casualty loss statutes of the Internal Revenue Code confirmed that the ordinary meaning of "misfortune or calamity" was a proper construction. Because the federal casualty loss statutes are similar in purpose to the disaster relief provisions of §170, federal cases construing those statutes are also useful in construing "fault."

Ordinary Meaning of "Fault"

"Fault," according to its ordinary meaning, is a wrongful act or omission undertaken with a conscious decision such that the consequences are reasonably foreseeable. Such conduct can also be described as "willful negligence." It involves a lesser degree of conscious design than intentional conduct -- which requires that the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result. And, "willful negligence" involves a greater degree of conscious design than ordinary negligence -- which requires only that the actor ought to have known the consequences.

The distinction between ordinary negligence, willful negligence, and intentional conduct is illustrated by the example of a person whose home catches fire due to smoking. The person would be liable for ordinary negligence if the fire started because he unknowingly emptied burning cigarette refuse into a wastebasket containing flammable material. A person would be "willfully negligent" if he consciously decided to smoke within a few inches of an open container of gasoline and it caught fire. One would act intentionally if he threw the lit cigarette into the gasoline container. "Willful negligence" is defined as conduct of an unreasonable character, consciously done, without regard for known risks or risks so obvious that the person must have been aware of it and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that the consequences

will follow. This definition must be tested against the apparent scope and purpose of §170.

"Fault" as "Willful Negligence" in the context of Section 170.

The objective of §170 is to afford financial relief to property owners whose property has been damaged or destroyed by misfortune or calamity after the lien date. Misfortune or calamity has been defined as "adversity that befalls one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it." (58 Op. Att'y. Gen., supra at 329.) According to this definition, the intent of §170 is to provide relief for an adverse event for which an owner had no forewarning.

Holding an owner to an ordinary negligence standard of conduct would be contrary to the stated purpose of §170. One who is ordinarily negligent, by definition, acts inattentively or inadvertently and, thus, does not foresee the consequences of his or her actions. It would make no sense to hold someone responsible for unforeseeable consequences when the purpose of §170 is to provide relief for unforeseeable events. On the other hand, "fault" construed as "willful negligence" is wholly consistent with the objective of §170. One who acts in a willfully negligent manner can foresee or predict the outcome of his or her actions with some degree of certainty due to his or her conscious disregard of obvious or known risks and their consequences. Therefore, construing "fault" as "willful negligence" means that disaster relief would be available to a property owner who caused damage or destruction through ordinary carelessness but would deny relief to an owner who consciously ignored risks despite the reasonable foreseeability of harmful consequences.

Judicial Construction of Federal Casualty Loss Statutes

Defining "fault" as "willful negligence" is also consistent with judicial construction of the federal statutory provisions relating to the analogous federal income tax casualty loss deduction. It has been long held that a casualty loss may result where the loss was due to the taxpayer's negligence. In *Heyn* v. *Commissioner* (46 T.C. 302, 308 (1966)), the court held that failure to exercise due care would not necessarily bar a casualty loss deduction for a landslide. The court cited Treasury regulations pertaining to automobiles which allowed for casualty losses when the damage resulted from ordinary negligence but not willful acts or willful negligence. In *White* v. *Commissioner* (48 T.C. 430, 435 (1967)), the court, following the *Heyn* case, held that "mere negligence on the part of the owner-taxpayer has long been held not to necessitate the holding that an occurrence falls outside the ambit of 'other casualty.' Needless to say, the taxpayer may not knowingly or willfully sit back and allow himself to be damaged in his property or willfully damage the property himself." Thus, federal decisions construing the nature of a casualty loss support the construction of "fault" as "willful negligence."

Conclusion

Where a statutory definition is unclear and the legislature has not provided any interpretive guidance, statutory language must be given ordinary meaning so long as that meaning is consistent with the scope and purpose of the statute. The common dictionary definition of "fault" as "willful negligence" is consistent with the purpose of §170. This means that disaster relief would be available to a property owner who caused damage or destruction to the property through ordinary negligence. However, relief would be denied to an owner who consciously ignored risks despite the reasonable foreseeability of harmful consequences. The willful negligence standard is also consistent with the federal judicial construction of analogous federal income tax casualty loss statutes.

If you have any questions or comments concerning the definition of "fault," please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Richard C. Johnson
FOR

J. E. Speed
Deputy Director
Property Taxes Department

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Division of Assessment Standards
SACRAMENTO

State of California

Board of Equalization
Legal Division

Memorandum

To: Mr. Dick Johnson, Chief
Assessment Standards Division - MIC:64

Date: April 25, 1996

From: Lou Ambrose

Subject: Definition of the term "fault" as used in Section 170 of the Revenue and Taxation Code

Issue: This memo is in response to your inquiry regarding the meaning of the term "fault" as used in section 170 of the Revenue and Taxation Code. The question you posed is whether "fault" in this context requires an intentional act or whether mere negligence would suffice.

Conclusion: "Fault" as used in Revenue and Taxation Code section 170 encompasses acts or omissions involving some degree of willfulness and foreseeability. At a minimum, "fault" means "willful negligence", but not "ordinary negligence".

I. Purpose of Section 170 of the Revenue and Taxation Code

Section 170 of the Revenue and Taxation Code authorizes county boards of supervisors to enact ordinances to provide for reassessment of property that has been damaged or destroyed by a misfortune or calamity. Section 170(a) states that "[n]otwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein."

The statute further requires that the damage or destruction have been caused by either "a major misfortune or calamity in an area or region subsequently proclaimed by the Governor to be in a state of disaster" or, alternatively, by a "misfortune or calamity". The operative terms are "misfortune or calamity". Section 170, as enacted, was based on former section 155.13 of the Revenue and Taxation Code, which also required that eligibility for relief be contingent on whether the owner was at fault.

II. Construction of the Word "Fault"

The legislative history of both section 155.13 and section 170, as reflected in our bill files, does not reveal any indication of legislative intent regarding "fault". In reviewing the precedent opinions I have found no instances in which the term "fault" has been defined. A search of case law turned up only one case discussing a building owner's entitlement to a reduced assessment of its property due to misfortune or calamity. The court in that case, T.L. Enterprises, Inc. v. County of Los Angeles, 215 Cal.App.3d 876, 880 (1989), held that the event causing the loss must be distinct, out of the ordinary, unforeseeable and beyond the control of the owner, but the concept of fault was not discussed.

In 1975 the Office of the Attorney General was asked to construe the meaning of "misfortune or calamity" as used in former section 155.13. 58 Op. Att'y Gen. 327 (1975). The opinion determined that a "calamity" was a type of misfortune and, in referring to analogous federal law, found that the terms "casualty" and "misfortune" were synonymous.[1] A review of the federal decisions interpreting the casualty loss statutes of the Internal Revenue Code confirmed that the ordinary meaning of "misfortune or calamity" was a proper construction. Because the federal casualty loss statutes are similar in purpose to the disaster relief provisions of section 170, federal cases construing those statutes are also useful in construing "fault".

III. Ordinary Meaning of "Fault"

"Fault", according to its ordinary meaning, is a wrongful act or omission undertaken with a conscious decision such that the consequences are reasonably foreseeable. Such conduct, described best as "willful negligence", involves a lesser degree of conscious design than intentional conduct - which requires that the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result - but a greater degree than ordinary negligence - which requires only that the actor ought to have known the consequences. The distinction between ordinary negligence, willful negligence and intentional conduct is illustrated by the example of a person whose home catches

[1] 58 Op. Att'y Gen. 327, 330 (1975) "A 'casualty' as used in this body of federal law has been defined as 'an accident resulting from an unknown cause and occurring unexpectedly, suddenly, without being foreseen and without design'."

fire due to smoking. The person would be liable for ordinary negligence if the fire started because he unknowingly emptied burning cigarette refuse into a wastebasket containing flammable material. A person would be "willfully negligent" if he consciously decided to smoke within a few inches of an open container of gasoline and it caught fire. One would act intentionally if he threw the lit cigarette into the gasoline container. "Willful negligence" is defined as conduct of an unreasonable character, consciously done, without regard for known risks or risks so obvious that the actor must be taken to have been aware of it and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow. BLACK'S LAW DICTIONARY 932, (5th ed.1979). This definition must be tested against the apparent scope and purpose of Section 170.

IV. "Fault" as "Willful Negligence" in the context of Section 170.

The objective of Section 170 is to afford financial relief to property owners whose property has been damaged or destroyed by misfortune or calamity after the lien date. Misfortune or calamity has been defined as "adversity that befalls one in an unpredictable or chance manner, arising by accident or without the will or concurrence of the person who suffers from it." 58 Op. Att'y Gen., supra at 329. According to this definition, the intent of section 170 is to provide relief for an adverse event for which an owner had no forewarning.

Holding an owner to an ordinary negligence standard of conduct would be contrary to the stated purpose of section 170. One who is ordinarily negligent, by definition, acts inattentively or inadvertently and, thus, does not foresee the consequences of his or her actions. It would make no sense to hold someone responsible for unforeseeable consequences, when the purpose of section 170 is to provide relief for unforeseeable events. On the other hand, "fault" construed as "willful negligence" is wholly consistent with the objective of section 170. One who acts in a willfully negligent manner can foresee or predict the outcome of his or her actions with some degree of certainty due to his or her conscious disregard of obvious or known risks and their consequences. Therefore, construing "fault" as "willful negligence", means that disaster relief would be available to a property owner who, unaware of obvious risks, caused damage or

destruction but would deny relief to an owner who consciously ignored risks despite the reasonable foreseeability of harmful consequences.

V. Judicial Construction of Federal Casualty Loss Statutes

Defining "fault" as "willful negligence" is also consistent with judicial construction of the federal statutory provisions relating to the analogous federal income tax casualty loss deduction. It has been long held that a casualty loss may result where the loss was due to the taxpayer's negligence. In Heyn v. Commissioner, 46 T.C. 302, 308 (1966), the court held that failure to exercise due care would not necessarily bar a casualty loss deduction for a landslide. The court cited Treasury regulations pertaining to automobiles which allowed for casualty losses when the damage resulted from ordinary negligence but not willful acts or willful negligence.[2] In White v. Commissioner, 48 T.C. 430, 435 (1967), the court, following the Heyn case, held that "mere negligence on the part of the owner-taxpayer has long been held not to necessitate the holding that an occurrence falls outside the ambit of 'other casualty' (citations omitted). Needless to say, the taxpayer may not knowingly or willfully sit back and allow himself to be damaged in his property or willfully damage the property himself." Thus, federal decisions construing the nature of a casualty loss support the construction of "fault" as "willful negligence".

VI. Conclusion

Where a statutory definition is unclear and the legislature has not provided any interpretive guidance, statutory language must be given ordinary meaning so long as that meaning is consistent with the scope and purpose of the statute. The common dictionary definition of "fault" as "willful negligence" is consistent with the purpose of Section 170, the purpose of which is to afford taxpayers property tax relief for

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[2] Treas. Reg., sec. 1.165-7(a)(3):
(3) Damage to Automobiles. An automobile owned by the taxpayer, whether used for business purposes or maintained for recreation or pleasure, may be the subject of a casualty loss, including those losses specifically referred to in subparagraph (1) of this paragraph. In addition, a casualty loss occurs when an automobile owned by the taxpayer is damaged and when:
(i) The damage results from the faulty driving of the taxpayer or other person operating the automobile but is not due to the willful act or willful negligence of the taxpayer or of one acting in his behalf, or
(ii) The damage results from the faulty driving of the operator of the vehicle with which the automobile of the taxpayer collides.

unpredictable disasters. The willful negligence standard is also consistent with the federal judicial construction of analogous federal income tax casualty loss statutes.

LAA:ba
cc: Mr. Jim Speed, MIC:63
Mr. Tom McClaskey, MIC:64
Mr. Jerry Trueblood, MIC:64
Ms. Sherrie Kinkle, MIC:64
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