STATE OF CALIFORNIA

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Executive Director

July 15, 1998

Governing Board Member
Charter School

Re: Property Tax Exemption

Dear Ms. :

This is in reply to your May 5, 1998 letter to Ms. Kristine Cazadd in which you request a written opinion on whether the property of the . Fe Charter School is exempt from property tax under the public schools exemption. As explained below, we conclude that the public schools exemption will be available to property used exclusively by the Charter School for public school/charter school purposes on January 1, 1999 pursuant to Assembly Bill 544 (Stats. 1998, Ch. 34) (AB 544), approved by the Governor on May 7, 1998, filed with the Secretary of State on May 8, 1998, and effective January 1, 1999. Our conclusion assumes, of course, that your agreement with the Unified School District is valid and in effect[1] and that the school property is used exclusively for public school/charter school purposes. Please note, however, that the public schools exemption is administered solely by the County Assessor; you should consult with that office to find out if the Assessor is in agreement with our conclusion.

You have submitted the following documents:

Amended Agreement between Unified School District and Charter School, revised and signed on March 17, 1998;

Articles of Incorporation of Charter School, Inc., filed February 13, 1996; and

Bylaws of Charter School.

[1] As our expertise is in the area of taxation and not education, we have not reviewed your documents as to compliance with the Education Code. We assume that the Unified School District has made that review. We assume also the judicial validation of the terms and conditions of the agreement (Amended Agreement, paragraph II.)

The amended agreement is made between Unified School District and Charter School, a nonprofit public benefit corporation, and provides in its recitals that the Charter School was organized under the authority of the California Education Code section 47600 et seq.. approved by the School District Board of Education and acknowledged by the State Board of Education on October 13, 1995.

The Charter Schools Act of 1992 (California Education Code sections 47600-47616) provides opportunities to establish and maintain schools "that operate independently from the existing school district structure, as a method to accomplish" specific purposes.[2] Assembly Bill 544 amends and adds certain provisions to the Education Code; sections 3 and 16 of AB 544 add Education Code sections 47604 and 47615, respectively. These sections are relevant to the issue of the public schools exemption.

First, as background, we note that the public schools exemption is set forth in section 3, subdivision (d) of Article XIII of the California Constitution which provides:

> [The following are exempt from property taxation:]
>
> Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.

Revenue and Taxation Code section 202. subdivision (a)(3) codifies the above constitutional exemption and provides for a property tax exemption for property used exclusively for public schools.

Newly enacted Education Code section 47604, subdivision (a) provides:

> Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code.

Newly enacted Education Code section 47615 provides:

> (a) The Legislature finds and declares all of the following:

[2] See Education Code section 47601.

(1) Charter schools are part of the Public School System, as defined in Article IX of the California Constitution.[3]

(2) Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools, as provided in this part.

(3) Charter schools shall be entitled to full and fair funding, as provided in this part.

(b) This part shall be liberally construed to effectuate the findings and declarations set forth in this section.

Based on Education Code sections 47604 and 47615, we conclude that the Charter School will be a "public school" as that term is used in the public schools exemption provisions cited above, and that the public schools exemption will be available to property used exclusively by the Charter School for public school/charter school purposes starting January 1, 1999, if the assumptions made as to the agreement with the Unified School District exist and if the agreement is in effect.

The question of whether charter schools incorporated as nonprofit corporations are eligible for the public schools exemption prior to the effective date of AB 544 is a separate question. As you have not asked that specific question, we do not address it herein except to note that there is a recent Attorney General Opinion which concludes that "a charter school may not be formed as a separate legal entity from the school district that granted the charter." 81 Ops.Cal.Atty.Gen. 140, 144 (April 2, 1998). Since a corporation is generally regarded as a distinct legal entity, a question is raised as to whether a nonprofit corporation can also be considered a "public school" or part of the public school system prior to the effective date of AB 544. Based on the Attorney General Opinion cited above, public school status and corporate status cannot be concurrent, hence, the need for AB 544.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

[3] Section 6 of Article IX provides that "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them."

Our intention is to provide timely, courteous, and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Sincerely,

Janet Saunders
Tax Counsel

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cc: Honorable
County Assessor

Mr. Richard C. Johnson (MIC:63)
Mr. Rudy Bischof (MIC:64)
Mr. David J. Gau (MIC:64)
Ms. Jennifer L. Willis (MIC:70)