



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 323-7715
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JAN 23 1997

January 22, 1997

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

Counsel

Re: Association

Dear _____,

This is in response to your December 30, 1996, letter to _____ wherein you requested reconsideration of Board staff's welfare exemption finding that _____ Association's Articles of Incorporation did not meet the requirements of Revenue and Taxation Code Sections 214(a)(6) and 214.01.

Revenue and Taxation Code Section 214 and following provide that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by a corporation organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if certain requirements are met. One such requirement is that of Section 214(a)(6):

"The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes."

As to when property is "irrevocably dedicated" to such a purpose or purposes, Section 214.01 provides, in pertinent part, that for the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation.

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As you state in your letter, the Association's Article VI dedicates the Association's assets to charitable and public purposes rather than to charitable purposes alone:

"The property of this corporation is irrevocably dedicated to charitable and public purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation, other than one created for religious purposes, which is organized and operated exclusively for charitable and public purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code."

As indicated, Section 214.01 states that for the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation. The purpose behind Section 214.01 was to substitute a specific requirement for the rather subjective test of "construing the articles of incorporation as a whole to imply dedication" of a corporation's property. Thus, the Board and Board staff have from its enactment in 1966 construed "only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation" literally.¹ Absent such a statement, all the requirements for exemption are not met and no exemption will be granted.

Accordingly, while the Association's Articles of Incorporation contain a statement of irrevocable dedication in Article VI, its scope is too great, and the Association would have to amend its Article VI to delete the reference to public purposes, file the amended articles with the Secretary of State's Office, and forward a certified copy thereof to the Board's Assessment Standard's Division, in order for its property to be eligible for the welfare exemption.

Similarly, while the Association's Article VI contains a dissolution clause, its scope is too great since Section 214(a)(6) contemplates distributions only to organizations organized and operated for religious, hospital, scientific, or charitable purposes and, again, amendment of its Article VI in this regard to delete the reference to "public purposes" would be necessary.

In your letter, you state that Board staff has narrowly construed the statute in finding that the dedication to charitable and public purposes is inadequate, rather than giving the

¹ The exception has been irrevocable dedication to charitable and educational purposes meeting the requirements for exemption provided by Section 214, as explained in the Board's SBE-ASD AH 267 Dedication Dissolution Clause form letter, a copy of which Mr. Palmer previously sent you

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statute the broad interpretation intended by the Legislature and interpreted by the Courts, citing Clubs of California for Fair Competition v. Kroger (YMCA of Oakland) (1992) 7 Cal.App.4th 709:

“...In fact, in Kroger the Court found that the ‘availability of the property tax exemption as a charity may depend on the extent to which the institution confers benefits on the general community or a broad and indefinite segment thereof.’”

Clubs of California for Fair Competition v. Kroger, supra, involved a court review of the activities of the new Oakland YMCA (Revenue and Taxation Code Section 214(a)(3)). The court held, among other things, that an organization’s charitable activities must serve either the community as a whole or an unascertainable and indefinite portion of the community to qualify for exemption under Section 214, consistent with the Supreme Court’s holding in Stockton Civic Theatre v. Board of Supervisors (1967) 66 Cal.2d 13, that to qualify for the welfare exemption a charitable activity must benefit the community as a whole or an unascertainable and indefinite portion thereof, and must meet the provisions of Section 214.

Clubs of California for Fair Competition v. Kroger, supra, did not discuss Sections 214(a)(6) and 214.01. This is because the YMCA had an acceptable statement of irrevocable dedication and an acceptable dissolution clause in its articles of incorporation and thus, the statement and dissolution clause in its articles of incorporation were never an issue. Had the YMCA’s articles of incorporation not included an acceptable statement of irrevocable dedication and an acceptable dissolution clause, the YMCA would have been found to have been ineligible for the exemption (Sections 214(a)(6) and 214.01), negating any perceived need for the action filed by Clubs of California for Fair Competition.

Finally in this regard, note that in Stockton Civic Theatre v. Board of Supervisors, supra, compliance with Section 214(6), now Section 214(a)(6), was deemed necessary for exemption:

“In considering whether there has been compliance with the requirement of irrevocable dedication, the critical factor is the corporation’s powers with respect to its properties, and these powers must ordinarily be ascertained from its articles of incorporation. (*Pacific Home v. County of Los Angeles*, 41 Cal.2d 844, 849)....

“*Pacific Home v. County of Los Angeles, supra*, 41 Cal.2d 814, 849 et seq., is controlling. In that case the articles reasonably construed as a whole showed that the corporation was organized for charitable purposes. The articles also provided that in the event of dissolution the assets of the corporation should pass to a named successor corporation which was organized both for exempt and

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nonexempt purposes....The court concluded that there was compliance with subdivision 6.

* * *

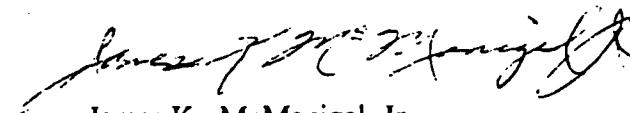
"Here as in *Pacific Home* the corporate purposes made it abundantly clear that plaintiff's assets are impressed with a charitable trust. Accordingly any successor would be required to devote the assets to charitable purposes."

Stockton Civic Theatre v. Board of Supervisors, supra, was a 1962 case, and when considering Section 214(6), the court construed the Theatre's articles of incorporation to imply irrevocable dedication of Theatre's property to charitable purposes and deemed that statement of irrevocable dedication to be sufficient in that case. As indicated, however, Section 214.01 has since 1966 substituted a specific requirement for statements of irrevocable dedication, and Stockton Civic Theatre v. Board of Supervisors, supra, is not a precedent for statements of irrevocable dedication after the enactment of Section 214.01, the first paragraph of which is largely unchanged since its enactment in 1966:

"For the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, in the bylaws, articles of association, constitution, or regulations thereof." (Stats. 1966, Ch. 147 (First Extra Session), in effect October 6, 1966.)

Finally, you state that the Association's application for exemption was approved by the County Assessor. In order to obtain statewide uniformity, pursuant to Revenue and Taxation Code Section 254.5(b), a claimant is required to file duplicate claims for the welfare exemption along with affidavits and financial statements with the assessor. The assessor forwards one set of claim documents to the Board, and recommends approval or denial of the claims. Board staff reviews the documents and any other pertinent information to make a finding as to the eligibility of the applicant and the applicant's property. The assessor may deny the claim of an applicant the Board finds eligible, but may not grant the claim of an applicant the Board finds ineligible.

Very truly yours,



James K. McManigal, Jr.
Supervising Tax Counsel