

(916) 323-7715

June 11, 1981

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This is in response to Mr. Gilbert E. Yniques' June 4, 1981, letter concerning Redacted Development Corporation, Inc.; its plan to develop an elderly housing project, presumably as the legal owner of the project/property; and the availability of the welfare exemption from property taxation as provided for by Section 214 and following of the Revenue and Taxation Code.

With respect to Section 202 housing, Section 214 provides that property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. 1701g), as amended, and owned and operated by religious, hospital, scientific or charitable funds, foundations or corporations meeting all of the requirements of this section shall be deemed to be within the exemption. Thus, only that portion of the project occupied by elderly or handicapped families could be eligible for the exemption.

With respect to Section 8, housing, Section 8 of the Housing and Community Development Act of 1974 (Section 201 of Public Law 93-383/42 U.S.C. Sec. 1437(f)), Section 8/Section 201 differs from Section 202 in that it does not pertain specifically to low-cost housing for elderly or handicapped families. Rather, tenants are not limited to elderly or handicapped families but are to include families of low incomes. Additionally, owners of such housing do not appear to be limited to organizations which might qualify for the welfare exemption but may include anyone who wished to acquire ownership of new or rehabilitated housing. Thus, whether property used for housing and related facilities and financed by the federal government pursuant to Section 201 will be eligible for the welfare exemption will have to be determined on a case-by-case basis: the property will have to be used exclusively for housing and related facilities for elderly or handicapped families and all of the requirements of Section 214 and following must be met.

In such non-Section 202 instances where the Board has granted the exemption, the sponsoring organization, in addition to being the legal owner of the property, has under-taken activity programs for residents, provided aid for the ill, or conducted transportation services. Although the Board has not adopted any specific requirements that would constitute a minimum element of charitable care that must be provided to qualify a project as exempt, the kinds of activities suggested in Mr. Ynigues' letter are of the kinds the Board has indicated will suffice.

Absent any restriction as to low income, however, the providing of housing for such families does not constitute a charitable activity. Thus, in Martin Luther Homes v. County of Los Angeles, 12 Cal. App. 3d 205, a
Page 2

June 11, 1981

nonprofit corporation providing housing and community centers for activity programs to persons over sixty years of age but not providing financial aid in the form of reduction or forgiveness of rental payments was not eligible for the exemption.

As for the requirements of Section 214, the corporation would have to be organized and operated for charitable purposes, and it could not be organized or operated for profit (Section 214(1)). No part of its net earnings could inure to the benefit of any private shareholder or individual (Section 214(2)). And its property would have to be irrevocably dedicated to charitable purposes, and upon its liquidation, dissolution or abandonment, its property would have to inure to the benefits of a fund, foundation, or corporation organized and operated for an exempt purpose or purposes (Section 214(6)). Property is deemed irrevocably dedicated to only those purposes is found in the articles of incorporation (Section 214.01).

Section 214.8 provides that with certain exceptions, the welfare exemption shall not be granted to any organization which is not qualified as an exempt organization under Section 2370d of the Revenue and Taxation Code or Section 501(c)(3) of the Internal Revenue Code.

When organizational requirements are met, it is then necessary for the corporation to establish that its property is actually used for an exempt activity or activities in order for it to receive the exemption. Thus, the corporation's property must be used for the actual operation of the charitable activity, and must not exceed an amount of property reasonable necessary to the accomplishment of the charitable purposes (Section 214(3)), its property must not be used so as to benefit anyone through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession (Section 214(4)), and its property must not be used for fraternal, lodge, or social club purposes (Section 214(5)).

Assuming that all requirements for the exemption are met, the corporation's property will be eligible for the exemption. Until such time as the claim for exemption and all supporting documents are filed with respect to the property and reviewed by the Board's staff, we cannot make a final determination. As you may know, the welfare exemption requires an annual filing by the claimant between March 1 and March 15 with an annual review by this Board and the County Assessor.

Very Truly Yours,

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