STATE OF CALIFORNIA

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July 27, 1987

Mr. Roland E. Giannini
San Mateo County Assessor
County Government Center
Redwood City, CA 94063

Dear Mr. Giannini:

This is in response to your April 27, 1987, letter to Mr. James J. Delaney wherein you advised that [illegible] Cooperative, a nonprofit corporation, uses a portion of its 104-unit housing complex to provide housing for elderly or handicapped persons, which portion is eligible for the welfare exemption pursuant to Revenue and Taxation Code section 214(f), and makes the remainder of the complex available to owners of shares or membership interests in the Cooperative who occupy their respective premises as their principal places of residence, which premises are eligible for the homeowners' exemption pursuant to Revenue and Taxation Code section 218. You then referred to section 218(d), which states in part that each homeowners' exemption allowed pursuant thereto shall be deducted from the total assessed valuation of the cooperative housing corporation and shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporation so as to benefit those homeowners who qualify for the homeowners' exemption; and you asked whether there is any welfare exemption section which would prevent the Cooperative from taking the welfare exemption into account when apportioning property taxes among its homeowners, thereby precluding the Cooperative from reimbursing itself from the otherwise exempt elderly and handicapped persons for a portion of the property taxes it pays.

Depending upon the answer to this question, given the single property, the single assessment, the availability and applicability of the welfare exemption as to a portion of the

property and homeowners' exemptions as to the remaining portion of the property, and a single net assessment to be billed to the Cooperative each year, either the elderly and handicapped persons will not be liable for any property taxes, and the homeowners will be liable for their respective shares of such taxes, where the welfare exemption is applied specifically to that portion of the property to which it pertains; or the elderly and handicapped persons as well as the homeowners might be considered liable for shares of the property taxes if the welfare exemption as well as the homeowners' exemptions are combined, are deleted from the single assessment, and the single net assessment is considered the obligation of all persons residing on the property.

We are not aware of any such welfare exemption section, nor would we expect one to exist. As you are aware, the welfare exemption applies to property used exclusively for a qualifying purpose or to that portion of a property used exclusively for a qualifying purpose. Where such occurs, either the entire property or the portion of the property used exclusively for the qualifying purpose is eligible for and receives the welfare exemption. As there is typically a single qualifying organization involved, the organization pays any property taxes owing as the result of any portion of its property not being eligible for the welfare exemption.

This situation is complicated by the fact that there are individual homeowners in addition to the Cooperative and the elderly and handicapped persons, all acting within the Cooperative's corporate status. However, although there is no specific welfare exemption section in this regard, we believe that the question is answered by the cases of English v. Alameda County (1977) 70 Cal.App.3d 226 and John Tenant Memorial Homes, Inc. v. City of Pacific Grove (1972) 27 Cal.App.3d 372. In English, various taxpayers brought a class action against several assessors seeking to compel them to assess the tenancies of individuals who occupied quarters or otherwise had the use of properties owned by nonprofit organizations. It was stipulated that the organizations, per se, were exempt and that the occupancies and other uses by the individuals were incidental to and reasonably necessary for the accomplishment of the purposes upon which the exemptions were based. The Court of Appeal decided against the class action and held that the interests of the individuals were exempt. Taxation of those interests would frustrate the policy which the exemptions were intended to promote. Imposition of tax on the occupancy or use of the properties by individuals whose presence was related to the organizations' purposes would, in the last analysis, cast the burden on the organizations, themselves.

In John Tenant Memorial Homes, Inc. two nonprofit corporations that owned and operated retirement homes which were exempt under the welfare exemption brought actions against a city to have declared void, and to enjoin enforcement of, an ordinance taxing the occupants of nonprofit retirement homes. The Court of Appeal held, among other things, that the ordinance was void because it conflicted with former Article XIII, section 1c of the California Constitution, now Article XIII, section 4(b) and section 214:

> "The fundamental basis for all exemptions in favor of charitable institutions is the benefit conferred by them on the public and the consequent relief of the burden on the state to care for and advance the interests of its citizens....
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> * * *
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> "The City's ordinance here in question is, therefore, in direct and irreconcilable conflict with the exemption as interpreted and construed by the courts....
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> * * *
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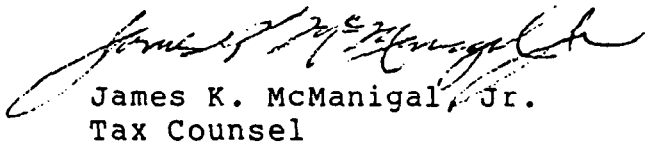
> "The tax imposed by the ordinance here is expressly designed to and applied only to persons who are beneficiaries of the welfare exemption. The ordinance attempts to recover for the City the amount of tax money that has been lost because of the retirement home tax exempt status. Thus, the purpose of the ordinance exactly and precisely nullifies and frustrates the state welfare exemption of Revenue and Taxation Code section 214 and section 1c of article XIII of the state Constitution."

Copies of these decisions are enclosed for your review.

In the same vein, the granting of the welfare exemption to that portion of the complex used exclusively to provide housing for elderly and handicapped persons followed by the seeking of reimbursement for property taxes from those persons, where the Cooperative is also a cooperative housing corporation with owners of shares or membership interests in other portions of the complex which are subject to property taxation, would cast a burden both on the Cooperative and on the elderly and handicapped persons, as well as providing the owners of shares or membership interests in the Cooperative with unwarranted reductions in applicable property taxes properly attributable

to them. In our view, English, John Tenant Memorial Homes, Inc., and public policy preclude such a result.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz
Enclosures
cc: James J. Delaney