



STATE OF CALIFORNIA

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Executive Secretary

August 19, 1986

Dear

This is in further response to your July 23, 1986, letter to the Board acknowledged as a petition for hearing in the matter of the staff's findings that property of the Clovis Municipal Development corporation is ineligible for the welfare exemption from property taxation for the 1985-86 and 1986-87 fiscal years because:

1. No provision for the irrevocable dedication of the corporation's property, and no dissolution clause.
2. No tax letter.
3. Charitable aspect not apparent.
4. Vacant, unused property.
5. No financial statements.

Inasmuch as the corporation is claiming exemption both under section 214 et seq., including Section 214.6, and section 231, use of single finding sheets to set forth the staff's findings with respect to each has resulted in some confusion. As hereinafter explained, upon completion of the construction contemplated, streets, sidewalks, curbs and gutters, water systems and waste-water facilities, such improvements and that portion of the land required for their use/reasonably necessary for their use could be eligible for exemption under Section 231 upon the amendment of the Corporation's Articles of Incorporation to include an acceptable statement of irrevocable dedication and an acceptable dissolution clause, but they can not be eligible for exemption under Section 214 et seq.

For the land or any portion of the land to be exempt, the Corporation has to establish that all of the requirements of Section 214 et seq. are met, or that all of the requirements of Section 231 are met. As between the corporation and the City with respect to Section 231 subdivisions, copy attached:

Section 231(a): Would be met only to the extent that the City actually uses the property or portions thereof, since the statutes require actual use of property for a qualifying purpose/activity in order for property to be eligible for the exemption. In your April 1, 1986, letter, you state that, "the land has been vacant and unused except for a small portion of it." So long as the property is vacant and unused, it is ineligible for the exemption.

In passing, it is noted that we have construed "property," as that term is used in Section 231, to include undeveloped land which has been leased to and used exclusively by government, since in numerous instances availability/future use of land is a prerequisite to construction of buildings or structures contemplated by the parties to be built on the land; since leases of land typically precede and sometimes are related to the financing of the buildings or structures to be constructed thereupon; and since Section 231(b)(2) specifically states that other property required for the use and occupation of buildings, which would include land, and leased to government can be exempt.

Section 231(a)(1): Section 214(a)(1), (2), (4), and (5) are met by the Corporation. As to Section 214(a)(3), so long as the property is vacant and unused, it is not used for the actual operation of an exempt activity.

As to Section 214(a)(6), while the second sentence of Section 231(a)(1) as enacted by Stats. 1968, ch. 1428, copy also attached, has provided from its inception that for purposes of Section 214(a)(6), irrevocable dedication to charitable purpose shall be deemed to exist if the lease provides that the property shall be transferred in fee to the entity of government leasing the same upon the sooner of either the liquidation, dissolution or abandonment of the owner or at the time the last rental payment is made under the provisions of the lease, Section 231(a)(3) states that by March 15, 1970, all of the provisions of Section 214.01 must be complied with. Thus, on and after March 15, 1970, an organization seeking to have its property leased to government exempt from property taxation under Section 231 must, like any other organization seeking the welfare exemption, have an acceptable statement of irrevocable dedication in its articles of incorporation (Section 214.01).

With respect to a dissolution clause, while the Corporation has a dissolution clause, it is in its Bylaws, not its Articles of Incorporation. A sample dissolution clause is also enclosed.

Section 231(a)(2): Among other things, financial statements are required by section 254.5. Upon further consideration, we will accept the balance sheets included in the Internal Revenue Service Form 1024, Application for Recognition of Exemption.

Section 231(a)(3): See Section 231(a)(1), above.

Section 231(b)(1) and (b)(2): These subdivisions denominate facility and other property, which would include land, as property to be exempt under Section 231(a). subsection (H) of subdivision (b)(1) includes water systems and waste-water facilities within the meaning of property as used in Section 231.

Stats. 1977, ch. 686, in effect September 8, 1977, added subsection (H) to subdivision (b)(l), and Stats. 1977, ch. 1004, in effect September 23, 1977, retained that subsection. Originally, subdivision (h) of section 231, as added by Stats. 1968, ch. 1428, provided that for leases entered into on or before December 31, 1968, the last unnumbered paragraph of subdivision (b), defining "uniquely of a governmental character," did not apply, and that for the purposes of subdivision (b)(l) the list of real property qualifying for exemption includes, among other things, water, sewer, and drainage facilities. Those exceptions were not included in subdivision (g), however, which related to leases entered into on or after January 1, 1969. Chapters 686 and 1004¹ then returned Section 231, insofar as it pertains to water systems and waste-water facilities, to the subdivision (h) interpretation.

As indicated in the June 13, 1977, Bill Analysis of AB 1873, which was enacted as chapter 686, the purpose of the water systems and waste-water facilities addition to Section 231(b)(l) was to exempt a water pipeline to be constructed in Orange County from a treatment facility to a point near a lake. Thus, additions to existing water systems (and to existing waste-water facilities) are contemplated by Section 231(b)(l) (H) and eligible for exemption under Section 231 if all of the requirements for exemption are met.

With respect to land used in conjunction with water systems or waste-water facilities or portions thereof, since Section 214(a)(3) requires that property be used for the actual operation of an exempt activity to be eligible for exemption, only that portion of the land required for the use of the systems/facilities or portions thereof/reasonably necessary for the use of the systems/facilities or portions thereof will be eligible for exemption. Given the nature of water systems and waste-water facilities (e.g., a large amount of pipeline, etc., as opposed to buildings or structures) only a portion of the land (that land required for the use of the pipeline, etc.) will be eligible for exemption.

As to the streets, sidewalks, curbs and gutters to be constructed, while subdivision (b)(l) does not specifically include them within the meaning of property as used in section 231, subdivision (b)(l) does provide that "property" as used therein is not all-inclusive, such that other construction of a kind or nature which is uniquely of a governmental character can be included therein. In our view, the construction of streets, sidewalks, and curbs and gutters is of a kind or nature which is uniquely of a governmental character and which can be considered "property" for purposes of Section 231(b)(l). Again, however, only that portion of the land required for the use of the streets, etc./reasonably necessary for the use of the streets, etc., will be eligible for exemption.

Section 231(b)(4): The property would continue to be ineligible for the exemption during the construction of the improvements contemplated. This is because while the "buildings under construction" provision of Article XIII, Section 5² of the Constitution is incorporated in this subdivision, it is not applicable in this instance since the contemplated improvements would not constitute a "building" as that term is used in Article XIII, Section 5 and in the subdivision.

¹ Chapter 1004 also amended the last paragraph of subdivision (b), which defines "uniquely of a governmental character," to except water systems and waste-water facilities from the prohibition against production of income or revenue therein.

² Exemption granted or authorized by Article XIII, Section 4(b) apply to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption.

According to Webster's Third New International Dictionary, a "building" is "a constructed edifice designed to stand more or less permanently, covering a space of land, usually covered by a roof and more or less completely enclosed by walls." Per Bouvier's Law Dictionary (Rawle's Ed. Vol. 1), "building" is defined as "an edifice erected by art, and fixed upon or over the soil, composed of stone, brick, marble, wood or other proper substance, connected together, and designed for use in the position in which it is so fixed" (Swasey v. Shasta County, 141. Cal. 392). cursory review discloses no California cases which have held that "building" includes improvements of the kind contemplated. To the contrary, it has been held that a ditch is not a "building" in Ellison v. The Jackson Water company, 12. Cal. 542, and in Hom v. Jones, 28 Cal. 194, which would suggest, along with the definitions set forth above, that improvements of the kind contemplated are not "buildings." Thus, only to the extent, if any, that improvements contemplated constitute "buildings" could the "buildings under construction" provisions of Article XIII, Section 5 and this subdivision be applicable upon the commencement of construction.

Section 231(d): The Corporation's Article II is to the effect that the corporation is nonprofit, no part of net earnings will inure to private benefit, and the Corporation is organized and operated for the specific purpose of holding and developing the property for the benefit of the City and its residents. Presumably, the Corporation is not conducted for profit, and the Corporation does have an Internal Revenue Code Section 501(c)(4) income tax exemption letter (only letter required by section 231). Thus, for purposes of Section 231, the Corporation would be deemed to be organized and operated for charitable purposes.

Section 231(i): The property is apparently located within the boundaries of the City (April 1, 1986, letter).

Section 231(j): The contemplated improvements were apparently advertised and put to competitive bid (April 1, 1986, letter).

In sum, although the requirements of Section 231 are not yet met (I.D. and V.U.P.), they could be, in which event the completed improvements and that portion of the land required for their use/reasonably necessary for their use could be eligible for exemption under Section 231.

As between the corporation and the City with respect to Section 214 et seq., as indicated, to the extent that the property is vacant and unused, it is not eligible for the exemption (Section 214(a)(3)), and the Corporation's Articles have neither an acceptable statement of irrevocable dedication (Sections 214(a)(6) and 214.01) nor an acceptable dissolution clause (Section 214(a)(6)). Also, the Corporation's Section 501(c)(4) income tax exemption letter is not acceptable, and it has no California income tax exemption letter (Section 23701d). Thus, the Corporation lacks both of the required letters. Also, there are no donations to the Corporation from outside sources which the Corporation is passing on to beneficiaries selected from an indefinite class for the benefit of the community as a whole (Assessors' Handbook AH 267, Welfare Exemption, page 17). Rather, the City has established the Corporation for a specific and limited purpose, one which is not necessarily a charitable purpose within the meaning of "charitable" for purposes of Section 214.

With respect to Section 214.6, while it does provide that property leased to a governmental entity can be eligible for the exemption, it requires that the requirements of Article XIII, Section 4(b) and Section 214(a)(1)-(7) be met and that the lease be for the purpose of conducting an activity

which if conducted by the owner would qualify the property for exemption. As indicated, the corporation does not meet all of the requirements of Article XIII, Section 4(b) and Section 214(a)(1)-(7), and the leasing of land to a governmental entity which is vacant and unused does not make the land or any portion of it exempt since vacant and unused land in the hands of the Corporation would not be an exempt use/activity "conducted" by the Corporation within the meaning of Section 214.

Similarly, the leasing of land to a governmental entity which has improvements of the kinds contemplated herein does not make the land or any portion of it exempt since, although improved, the land in the hands of the Corporation would not be an exempt use/activity "conducted" by the corporation within the meaning of Section 214.

In sum, the requirements of Sections 214 and 214.6 are not and, in all probability, cannot be met (I.D., N.T.L., C.N.A., and V.U.P.).

Finally, while it has been contended in the April 29, 1986, letter that the property should continue to be exempt because it was exempt in the hands of the City, such was, of course, the case because under Article XIII, Section 3(b) all property owned by a city, used or vacant and unused, is exempt from

Property taxation, whereas under Article XIII, section 4(b) and Sections 214 et seq. and Section 231, property must be both owned by qualifying organizations and actually used for a qualifying purpose/activity. As indicated, property is not being used for a qualifying purpose/activity so long as it is vacant and unused.

As indicated in his July 30, 1986, letter, Hr. Bell will be advising you of the Board's decision on your request for hearing.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosures

cc: Mr. Willian C. Greenwood
Fresno County Assessor
bc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton
Mr. William L. Grommet
DAS File