



## STATE BOARD OF EQUALIZATION

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July 27, 1990

Hon. R. J. Sanford  
Ventura County Assessor  
800 South Victoria Avenue  
Ventura, CA 93009

Attention: Ms. Valerie M. Chavarria  
Appraiser II

Dear Mr. Sanford:

This is in response to your May 8, 1990, letter to Bill Minor wherein you inquired concerning the lease and use of portions of Santa Barbara/Ventura College of Law's property by the Ventura County Bar Association and Ventura County and the availability of the college exemption for such property under the circumstances.

The College-Bar Association Lease states, in part:

"1. Leased Premises. Lessor is owner of and hereby leases to Lessee the following described real property situated in the City of Ventura, County, California:

A portion of these certain premises located at 4475 Market Street, Ventura, California 93003, commonly known as Ventura College of Law, and more particularly described as follows:

Exclusive use of:

1. Upstairs Northwest corner office

Non-exclusive use of:

2. Upstairs conference room;
3. Large room upstairs which is used for the Ventura County Free Clinic....

"2. Term. The term of this lease shall be for two (2) years, beginning January 1, 1989 and ending and terminating December 31, 1990. Lessor also grants to Lessee two options to extend the term of this Lease....

"3. Rent. Lessee shall pay to Lessor for the use and occupation of said premises a rent of \$600.00 per month in

advance on the first day of each month of the term of this lease. ....

"4. Use of Premises. The premises are leased to Lessee for the sole purpose of conducting County Bar Association business, and for no other purpose without the written consent of Lessor first had and obtained.

\* \* \* "

And the College - County Lease states, in part:

"RECITALS:

- 1. The College is the owner of the building located at 475 Market Street, Ventura, California.
- 2. The second floor of the building contains classrooms that are not needed by the College during normal daytime working hours....
- 3. The County would like to use one or more of said classrooms from time to time during normal daytime working hours for conferences, seminars, testing and other related uses.

"IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

- 1. Subject to availability, County may use any or all of the classrooms referenced above, as well as appurtenant restroom facilities, hereinafter called "premises", on weekdays (excepting holidays and other days on which the college offices are closed) between the hours of 7:00 a.m. and 5:30 p.m., provided, however, that County shall give the College at least one week's prior notice of such intended use, either verbally or in writing.
- 2. County shall pay to the College a fee of \$75 per day per room for use of the premises.

\* \* \*

- 6. This Agreement shall continue in full force and effect unless terminated by either party....

\* \* \* "

The College received rents of \$10,350 in 1989.

As you know, the starting point for the college exemption is Article XIII, Section 3(e) of the California Constitution, which states:

"The following are exempt from property taxation:

\* \* \*

"(e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.

\* \* \* "

Revenue and Taxation Code section 203 implements the college exemption by defining an educational institution of collegiate grade for purposes of the exemption.

Thus, as used in Article XIII, Section 3(e), a "nonprofit institution of higher education" is an institution defined as such in section 203. And buildings, land, and equipment "used exclusively for educational purposes" includes any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college, including housing for faculty and students (The Church Divinity School of the Pacific v. Alameda County, 152 Cal.App.2d 496). "Used exclusively", of course, includes exclusive use, and also certain types of incidental use; but such incidental use must be directly connected with, essential to, and in furtherance of the primary use and must be reasonably necessary for the accomplishment of the primary purpose for which the exempt organization is organized (Honeywell Information Systems, Inc. v. Sonoma County, 44 Cal.App.3d 23).

Accordingly, we have been of the opinion that property of a nonprofit institution of higher education/college leased to and used by individuals or organizations that are not colleges is neither used exclusively by the college for educational purposes nor used exclusively as that term has been construed in Honeywell Information Systems, Inc. v. Sonoma County, supra. This is especially so where the college has, in its leases or elsewhere, disavowed any college sponsorship or involvement with the individuals or organizations leasing and using its property or with their uses or programs. As the result, in our view, those portions of colleges' properties used by individuals or organizations that are not colleges are not eligible for the college exemption.

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In these instances, neither the Bar Association nor the County are nonprofit institutions of higher education/colleges, and their uses of the College's property, for Bar Association Business and for County Business are uses other than for educational purposes, are not directly connected with, essential to, or in furtherance of the College's primary use, and are not related to the accomplishment of the primary purpose for which the College is organized. In our view then, those portions of the College's property used by the Bar Association and the County are not eligible for the college exemption.

A "strict but reasonable" construction of the college exemption was most recently provided in Board of Trustees v. Santa Clara County, 86 Cal.App.3d 79, wherein property used as a golf course by Stanford University, its faculty, students, and alumni, and the general public was held to be eligible for the exemption. A copy of the court's decision is enclosed for your review. In our view, however, that case is distinguishable from these instances in at least the following respects:

1. In Board of Trustees, the court went to great lengths to demonstrate the special relationship between the University and its alumni. Here, the leasing organizations have no such relationship.
2. In Board of Trustees, use of the golf course was viewed in terms of individual rounds, one-time uses of the course. Here, the College's property is leased to organizations for their private purposes/uses. As indicated, property of a college used by organizations that are not colleges is not used exclusively by the college for educational purposes.
3. In Board of Trustees, the trial court found that the incidental use of the golf course did not involve totally separate and independent activities bearing no reasonable relationship to the primary educational function (p. 85). Here, the organizations' activities are separate and independent activities with respect to which the College has no apparent involvement.
4. In Board of Trustees, the trial court found that the incidental use of the golf course was not undertaken as a means of generating revenue (p. 85). Here, whether the leasing of the property is for revenue-generating purposes must be determined. In Honeywell Information Systems, Inc. v. Sonoma County, supra, property used for both public school purposes and revenue-generating purposes was held to be ineligible for the public schools exemption, which requires that property be used exclusively for public schools (Article XIII, section 3(d))

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of the California Constitution and Revenue and Taxation Code section 202(a)(3)). In that case, the property had been used exclusively for public school purposes 96.44 percent of the time and used to generate revenue 3.56 percent of the time. If, upon review, it is determined that the leasing of the property is for revenue-generating purposes, Honeywell Information Systems, Inc. v. Sonoma County, supra, those portions of the college's property used by organizations that are not colleges should similarly be ineligible for the college exemption. And as indicated, such a determination would distinguish Board of Trustees v. Santa Clara County, supra, wherein the trial court found that the incidental use of the golf course was not undertaken as a means of generating revenue.

Also in this regard, were you to conclude that portions of the College's property were being used for revenue generating purposes, it is likely that the College would claim that the revenue derived was used for the College, students, etc., and that because thereof, the use/revenue generating should not result in findings of ineligibility. It is well established, however, that it is the use of the property which renders it exempt or nonexempt, not the use of the income derived from it. See Cypress Lawn Cemetery Assn. v. San Francisco, 211 Cal. 387, and Y.M.C.A. v. Los Angeles County, 35 Cal.2d 760.

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

Very truly yours,



James K. McManigal, Jr.  
Tax Counsel

JKM:sp  
2554D

Enclosure

cc: Mr. E. L. Sorensen, Jr.  
Mr. John Hagerty  
Mr. Verne Walton  
Mr. James Barca  
Mr. Bill Minor



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KENNETH CORY  
Controller, Sacramento

DOUGLAS D. BELL  
Executive Secretary

June 16, 1987

Mr. James J. Dal Bon  
Marin County Assessor  
Administration Building  
Civic Center  
P. O. Box C  
San Rafael, CA 94913

Attention: Ms. Sonja Jestadt  
Exemption Clerk

Dear Mr. Dal Bon:

This is in response to your April 23, 1987, letter to Mr. William Minor wherein you enclosed materials pertaining to ~~World College West~~, and you asked whether summer rentals of the College's facilities and the College's catering operation are compatible with the requirements of the college exemption.

As to the rentals, the College offers use of its facilities or a portion thereof, which include a dining and meeting center, a lecture theater, meeting rooms, a library, and living units, together with meals, for summer conferences, workshops or retreats. According to the Pricing List, rates are \$32 or \$36 per day for groups of 10-50 and \$29 or \$32 per day for groups of 51-110. Meeting rooms may be rented separately for \$50, \$75, or \$150 per day.

As to the catering operation, the College offers gourmet fare from Italian, French and other schools of cooking to be served at locations throughout the Bay Area, including its facilities, and to accommodate groups of 10 to 500:

"...the College also runs a highly successful gourmet catering business. Students involved in the catering business find it not only a good source of income but also a valuable educational experience as they learn aspects of entrepreneurial thinking, marketing, strategic planning, food preparation, presentation and basic business skills."

As you know, Revenue and Taxation Code section 203 states that the college exemption is as specified in article XIII, section 3(e) of the California Constitution. Article XIII, section 3(e) states that property used exclusively for educational

purposes by a nonprofit institution of higher education is exempt from property taxation. Property "used exclusively for educational purposes" includes any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college, including housing for faculty and students (The Church Divinity School of the Pacific v. Alameda County, 152 Cal.App.2d 496). "Used exclusively", of course, includes exclusive use, and also certain types of incidental use; but such incidental use must be directly connected with, essential to, and in furtherance of the primary use and must be reasonably necessary for the accomplishment of the primary purpose for which the exempt organization was organized (Honeywell Information Systems, Inc. v. Sonoma County, 44 Cal.App.3d 23). Thus, property of a college used by others, individuals or organizations that are not colleges, is neither used exclusively by the college for educational purposes nor used exclusively as that term has been construed in Honeywell Information Systems, Inc. v. Sonoma County, *supra*. As the result, that portion of the College's property used by others would not be eligible for the college exemption.

With respect to the catering operation/business, that portion of the College's property used therein is being used for commercial purposes as well as for educational purposes and, thus, it is not eligible for the college exemption. This situation is comparable to that of Honeywell Information Systems, Inc. v. Sonoma County, *supra*, wherein property used for both public school purposes and revenue-generating purposes was held to be ineligible for the public schools exemption, which requires that property be used exclusively for public schools (article XIII, section 3(d) of the California Constitution and Revenue and Taxation Code section 202(a)(3)). In that case, the property had been used exclusively for public school purposes 96.44 percent of the time and used to generate revenue 3.56 percent of the time.

As to any claim that revenue derived from the business is used for the College, students, etc., it is the use of the property which renders it exempt or nonexempt, not the income derived from it. See Cypress Lawn Cemetery Assn. v. San Francisco, 211 Cal. 387, and Y.M.C.A. v. Los Angeles County, 35 Cal.2d 760. As to any claim that the business provides valuable educational experience to the students, etc., while any learning experience is valuable, it seems clear that educational experience is incidental to revenue-generating purposes in this instance. Neither is such educational experience related to the College's curriculum: clear thinking, writing, speaking, scientific thought, mathematics, Western cultural history, study of a developing region, etc. And even if it could be concluded that

Mr. James J. Dal Bon

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the educational experience was in some way related to the College's curriculum, such would not negate the facts of use for commercial purposes and use for revenue-generating purposes, which would remain as grounds for denial of the exemption as to that portion of the property.

Very truly yours,

James K. McManigal, Jr.  
Tax Counsel

JKM/rz

cc: Mr. William Minor

bc: Mr. Gordon P. Adelman  
Mr. Robert Gustafson  
Mr. Verne Walton  
Mr. Gene Palmer  
Legal

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