



Opinion No. 85-206—April 11, 1985

SUBJECT: TAXATION ON TRANSFER OF DEEDS OF TITLE OF REAL PROPERTY TO STATE TEACHERS' RETIREMENT SYSTEM—Deeds transferring the title of real property to the State Teachers' Retirement System are not subject to a county documentary transfer tax.

Requested by: THE STATE TEACHERS' RETIREMENT BOARD

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Rodney O. Lilyquist, Deputy

THE STATE TEACHERS' RETIREMENT BOARD has requested an opinion on the following question:

Are deeds transferring the title of real property to the State Teachers' Retirement System subject to a county documentary transfer tax?

CONCLUSION

Deeds transferring the title of real property to the State Teachers' Retirement System are not subject to a county documentary transfer tax.

ANALYSIS

Through the enactment of the State Teachers' Retirement Law (Ed. Code, §§ 22000–24944),¹ the Legislature has established a statewide teachers' pension plan known as the State Teachers' Retirement System ("System"). (See § 22001; California Teachers Assn. v. Cory (1984) 155 Cal. App. 3d 494, 500–501.)

The System is managed by the Teachers' Retirement Board ("Board") comprised of eleven members. (§ 22200.) The Board receives contributions made to the System by teachers, school districts, and the state (§ 22300), invests the funds received (§§ 22222–22224), and pays out various benefits (§§ 22214–22216, 22224–22229). The Board is specifically authorized to invest the funds in real property. (§ 22313; see also § 22222.)

The question presented for analysis is whether a county documentary transfer tax may be imposed where the Board acquires real property in its management of the System. We conclude that such a tax may not be imposed.

Section 24 of article XIII of the Constitution states in part: "The Legislature may not impose taxes for local purposes but may authorize local governments to impose

¹All unidentified section references hereafter are to the Education Code.

them." Pursuant to this express constitutional grant of authority, the Legislature has enacted the Documentary Transfer Tax Act ("Act"). (Rev. & Tax. Code, §§ 11901-11935.)

The Act generally empowers cities and counties to impose by ordinance a tax on the sale of realty of fifty-five cents for each \$500.00 of value. (Rev. & Tax. Code, § 11911.) The Legislature has provided numerous exemptions from the Act's provisions. (Rev. & Tax. Code, §§ 11921-11926.) Of particular significance is Revenue and Taxation Code section 11922:

"Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this part when the exempt agency is acquiring title."

In 56 Ops. Cal. Atty. Gen. 79 (1973), we examined this statutory exemption with respect to the Public Employees' Retirement System ("PERS"). We concluded that PERS was a unit of state government performing a state function and that when it acquired real property in its investment program, the transaction was exempt from a city's or county's documentary transfer tax. (Id., at 219-220; see also 56 Ops. Cal. Atty. Gen. 79, 80-84 (1973).)

Similar to PERS, the System is a unit of state government performing a state function. Section 22001 provides in part: "The system is a unit of the State and Consumer Services Agency." As part of the government of California, the System may acquire title to real property without a tax being imposed upon the sale under the express provisions of Revenue and Taxation Code section 11922.

In answer to the question presented, therefore, we conclude that deeds transferring the title of real property to the System are not subject to a county documentary transfer tax.
