



(916) 445-6155

October 22, 1976

Mr. B

Attn: Ms. A

Dear Ms. A :

This is in response to your letter to Mr. Delaney of September 14, 1976, wherein you inquire about general appraisal practices involving HUD developments, and specifically about such practices with respect to the Owens Valley Indian Housing Authority.

Generally, local housing authorities operate pursuant to the U.S. Housing Act of 1937 (42 U.S.C. §1437, et seq.) whereby the U.S. Department of Housing and Urban Development provides financial and technical assistance to public housing agencies for the development and operation of low-income housing projects. In order to make the benefits of the federal statute available to this state and its political subdivisions, the California Legislature enacted the Housing Authorities Law (Health & Saf. Code §34200, et seq.). The properties of such housing authorities are owned by public entities, serve a public purpose, and are, therefore, exempt from taxation. (County of Los Angeles v. Dockweiler, 14 Cal. 2d 437 (1939); Health & Saf. Code §§34400, 34401.) Section 34401 provides that in lieu of all taxes and special assessments the authority may agree to make payments for services, improvements, or facilities furnished for the benefit of a housing project owned by the authority.

The Owens Valley Indian Housing Authority differs from the above described type of authority in that it is not

established pursuant to state law, but rather by tribal ordinance. Part 805 of Title 24, Code of Federal Regulators (effective March 9, 1976) is applicable to such projects which are developed or operated by an Indian Housing Authority. In this regard 24 CFR §805, 108(a) provides that an IHA may be established:

"By a tribal ordinance enacted by exercise of a tribe's powers of self-government independent of state law, creating an IHA with all necessary legal powers to carry out low income housing projects for Indians, which IHA shall be established in accordance with §805.109."

According to a spokesman from the U.S. Department of Housing and Urban Development, the Owens Valley Indian Housing Authority was established by such an ordinance and is composed of three reservation tribes: Lone Pine, Big Pine and Bishop.

I

The first question you asked with regard to the Owens Valley Indian Housing Authority is: "Will HUD issue individual permits to establish ownership?"

One of the provisions of the deed states:

"WHEREAS, the Grantee has agreed to purchase the property for use in connection with the development of a low-rent housing project assisted under the USH Act,...."

The phrase "low-rent housing project" connotes a project affording a permanent resource of public housing accommodations for low-income families, as opposed to acquisition by such a family looking toward eventual ownership. (See 52 Cal. Ops. Atty. Gen. 133, 135.) In response to your first question, HUD will not issue individual permits to establish ownership since ownership will not pass to an individual or family, but rather will remain with the Owens Valley IHA.

II

Secondly, you ask, "Will the occupants have a taxable possessory interest in their individual units?"

The declared Congressional policy with respect to the U.S. Housing Act is "to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income...." (42 U.S.C. §1437.) When used in this Act, the term "State" includes Indian tribes, bands, groups and Nations. (42 U.S.C. §1437a(7).) Furthermore, federal aid is restricted to housing which is exempt from all state and local real and personal property taxes, although authorities may be required to make in lieu payments of up to one-tenth of their rent receipts if local jurisdictions so desire. (42 U.S.C. §1437d(d).)

With respect to whether the tenants of the Owens Valley IHA have a taxable possessory interest in the individual units, the court in John Tennant Memorial Homes, Inc. v. City of Pacific Grove, 27 Cal. App. 3d 372 (1972), decided a similar issue. In this case, the court held void a city ordinance that imposed a tax on occupants of retirement homes which were granted a property tax exemption pursuant to Rev. & Tax. Code §214 (welfare exemption). In so holding, the court reasoned that the purposes of the ordinance exactly and precisely nullify and frustrate the state's paramount interest of encouraging low-cost private housing facilities for the aged. Thus, in light of the declared policy of the U.S. Housing Act, the above rationale is applicable whether the authority was established pursuant to Health & Saf. Code §34200, et seq., which contains a similar declaration of public policy in §34201, or by tribal ordinance, which contains a similar declaration of need (see 24 CFR Part 805, Appendix I). In either case, it is our opinion the possessory interest is not taxable; to determine otherwise would defeat the public purpose as declared by both state and federal governments of providing safe, sanitary, low-cost housing for low-income families.

It is also my understanding that pursuant to Section 5(c) of the deed and 42 U.S.C. §1437c(e)(2), the Mono County Counsel drafted a local cooperation agreement with the Owens Valley IHA which was approved by your County Board of Supervisors on July 20, 1976. It is also my understanding that this agreement purports to exempt the authority from all real and personal property taxes. As to whether this agreement specifically refers to possessory interests, I suggest that you contact the County Counsel in order to acquire this information.

Ms. A :

October 22, 1976

I trust the foregoing is responsive to your inquiries. If we may be of further assistance, please feel free to contact this office.

Very truly yours,

John H. Knowles Tax Counsel

By: Margaret S. Shedd
Legal Counsel

MSS:rl
3574D

(916) 445-4588

September 20, 1979

Mr. S :

Re: All Mission Indian Housing Authority
Tax Exempt Status

Dear Mr. S :

In your letter of September 10, 1979, you asked whether the opinion expressed by Ms. Shedd, in her letter to you of April 8, 1977, is still correct.

To Wit: Property owned by an Indian Housing Authority would be exempt from property taxes.

The position stated in Ms. Shedd's letter remains unchanged, i.e., the property is exempt.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:rl
3575D