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880.0050 **Conditional Deeds.** A grant deed to an organization qualified for the welfare exemption which contains a right in the grantor to reenter the land and terminate the donee's interest within 25 years under specified conditions does not constitute a "reversionary provision" referred to in Revenue and Taxation Code Section 214.3. A "reversion" as defined in Civil Code Section 768 is the residue of an estate left by operation of law that commences in possession on the termination of the estate granted. The right to terminate an estate on the breach of a condition is not an estate of any kind. C 5/31/89.



STATE BOARD OF EQUALIZATION

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May 31, 1989

Dear:

This is in response to your April 5 and April 24, 1989, letters concerning the Arnold and Mabel Beckman Center of the National Academies of Science and Engineering, 100 Academy Drive, Irvine; the National Academies Corporation; the irrevocable dedication of the Corporation's property, and, particularly, the irrevocable dedication of the land donated to the Corporation by The Irvine Company for the Center; and the eligibility of that land for the welfare exemption from property taxation.

As you are aware, Revenue and Taxation Code section 214(a)(6) requires that the property of an organization seeking the exemption be irrevocably dedicated to religious, charitable, scientific or hospital purposes, and that upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific or charitable purposes. Section 214.01 provides that property is deemed irrevocably dedicated to religious, charitable, scientific or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of a corporation. While Article 5 of the Corporation's Articles of Incorporation irrevocably dedicates the Corporation's property to charitable purposes, however, staff questioned whether the land donated to the Corporation by the Irvine Company was irrevocably dedicated for purposes of the exemption because The Irvine Company had retained in the Donation Agreement among it, the Beckman Foundation, the National Academy of Sciences, and the National Academy of Engineering Fund a right to reenter the land and take possession thereof and terminate the ownership interest of the Corporation in the land within 25 years under specified conditions:

"(a) The Land or any portion thereof is held, used, developed, operated or maintained for any purpose other than as described in the Deed, except that this provision shall not apply in the event of condemnation or the commencement of legal proceedings under the power of eminent domain;

"(b) The Academies' Corporation shall not have commenced construction of the facility within 18 months of the donation by TIC, and substantially completed such construction within 30 months of commencement of construction;

"(c) The Academies' Corporation abandons the facility; or

"(d) The Academies' Corporation sells, leases (except as otherwise contemplated herein) or otherwise transfers or attempts to transfer all or a portion of its interest in the Land or any improvements thereon to a third party without the prior written approval of TIC which may be withheld in its sole discretion.
. . ."

and because The Irvine Company had retained in its Gift Deed to the Corporation a right to reenter the land and terminate the Corporation's interest therein within 25 years under specified conditions:

"5. Conditions Subsequent and Grantor's Right of Re-entry and Power to Terminate. Notwithstanding anything to the contrary in this Deed, in addition to the remedies described in paragraph 4(d), above, the following are hereby declared to be conditions subsequent to the conveyance evidenced by the Deed, upon the occurrence of any one or more of which, Grantor may reenter and take possession of the Land and remove any or all persons or facilities therefrom at the sole cost and expense of Grantee, said right to reenter to be effective and enforceable pursuant to California Civil Code Section 885.010 et seq., as amended or modified from time to time, and Grantor shall have the power

to terminate all of Grantee's interest in the Land as described therein:

"(a) The land or any portion thereof or Improvements thereon or any portion thereof, is held, used, developed, operated or maintained for any purpose other than as specified in the CC&R's (see paragraph 3(q), above), . . .

"(b) Grantee shall not have commenced construction of the Specific Facilities within 18 months of the recordation of this Deed or substantially completed construction of the Specific Facilities within thirty (30) months from the date of commencement of construction; . . .

(c) Grantee abandons the Land and/or the Specific Facilities; or

(d) Grantee sells, contracts to sell, assigns, leases (except as otherwise permitted pursuant to the Donation Agreement) or in any other way transfers or conveys any, or all or a portion, of its interest in the land or the Specific Facilities to a third party without the prior written approval of Grantor, which may be withheld in Grantor's sole discretion.

"Notwithstanding anything to the contrary herein, any such right of Grantor described in this paragraph 5 shall vest, if at all, within twenty-five (25) years of the date of recordation of this instrument, or shall otherwise be void and of no force or effect."

In this regard, staff noted that Revenue and Taxation Code section 214.3 has provided since 1953 that in the event that any property described in section 214(a)(6) shall have been used solely for charitable purposes for a minimum period of 20 years (30 years as of 1966), the exemption shall extend to the property irrespective of any reversionary provision(s) in the title of the property respecting liquidation, dissolution or abandonment, if the ownership, operation, use and dedication of the property are otherwise within the purview of section 214. Absent this section, property used solely for charitable purposes for any period, including periods in excess of 30 years, would not be eligible for

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the exemption where, as the result of a reversionary provision(s) in the title, an organization not meeting the requirements for exemption retained an interest in the property.

In your April 24 letter, you referred to Pacific Home v. Los Angeles County, 41 Cal.2d 844, wherein the California Supreme Court held, among other things, that all the assets of a corporation organized solely for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes. Under the principles of that case then, you asserted that any successor to the Corporation, including The Irvine Company were it to reacquire the land under The Donation Agreement and/or Gift Deed, would be required to devote the Corporation's assets to charitable purposes, an obligation which could be enforced in an action brought by the California Attorney General who has broad power and authority with respect to the regulation of charitable corporations and the enforcement of charitable trusts.

You asserted further that such would be the result in this instance not only because the land became impressed with a charitable trust upon its being donated to the Corporation but also because the Corporation's Articles and the Gift Deed should be read together as a single instrument (Biescar v. Czechoslovak-Patronant, 145 Cal.App.2d 133). In this regard, you pointed out that the Corporation was created as a charitable corporation with the acquiescence and agreement of The Irvine Company, The Irvine Company gave the land to the Corporation under the Donation Agreement subject to an explicit declaration that the Corporation's property was "irrevocably dedicated" to charitable purposes, and drafts of both the exhibits to the Donation Agreement. Thus, in the unlikely events that a condition set forth in the Donation Agreement and Gift Deed were to occur and The Irvine Company were to exercise its right of reentry, at the least The Irvine Company would get the land back impressed with a charitable trust but more likely, the Corporation or the National Academy of Sciences, a signatory of the Donation Agreement, would be required by the courts to conform the operation of the Beckman Center to the original terms and charitable purposes of the gift (Holt v. College of Osteopathic Physicians and Surgeons, 61 Cal.2d. 750).

As to section 214.3, in your April 24 letter you referred to In Re Los Angeles County Pioneer Society, 40 Cal.2d 852, wherein the California Supreme Court held that where property is conveyed to a trustee with an express declaration of a charitable purpose by the donor and there is a failure of the charitable trustee, a court

of equity should appoint a successor trustee to carry out the charitable intent of the donor. The Court recognized, however, that if a donor of property to a charitable corporation wanted his or her property to revert upon dissolution of the corporation, such a clause could be inserted in the donation agreement or gift deed. You asserted that such is not the case in this instance, however, in that The Irvine Company's right of reentry and power of termination do not come into existence upon the dissolution of the Corporation¹ and because the right of reentry, whereunder the estate does not automatically terminate but terminates only if the person having the right exercise it, is distinguishable from a reverter or possibility of reverter, where when the triggering event occurs the estate of the grantee automatically terminates.

We agree that Pacific Home v. Los Angeles County, supra, and other cases stand for the proposition that assets of a corporation organized for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes. The court went on to hold in Pacific Home v. Los Angeles County, supra, that under the circumstances of the case, neither Pacific Home nor its successors could legally divert its assets to any purposes other than charitable purposes. However, the "circumstances" of that case apparently did not include property acquired by Pacific Home subject to reverter or possibility of reverter or right of reentry, whereas, as indicated, In Re Los Angeles County Pioneer Society, supra, the Court discussed the acquisition by a charitable corporation of property subject to reverter and recognized an exception to the imposition of a charitable trust upon such acquisition. On the other hand, The Irvine Company retained a right of reentry rather than a reverter or right to reverter under the Donation Agreement and in its Give Deed, hereinafter discussed, and The Irvine Company gave the land to the Corporation pursuant to a Donation Agreement which had as Exhibits thereto drafts, later finalized, both of the Corporation's Articles and the Gift Deed. Under the latter circumstances, we believe that it can be said that The Irvine Company gave the land to the Corporation subject to the irrevocable dedication provision of the Corporation's Articles such that the land, like other property acquired or to be acquired by the Corporation, became or will become, impressed with a charitable trust which can be enforced in an action brought by the Attorney General.

¹Upon dissolution of the Corporation, Its assets will go to the National Academy of Sciences and to The National Academy of Engineering Fund if they qualify, and if neither is qualified, then to some other charitable corporation.

As to the retention of the right of reentry and section 214.3, as indicated, section 214.3 provides that the exemption shall extend to property "irrespective of any reversionary provisions." While decisions occasionally characterize a right of reentry as a "reversionary interest", the more accurate analysis of such disclosures that it is distinguishable from a reversion (Parry v. Berkeley Hail School Foundation, 10 Cal.2d 422). As stated in Volume 1, Chapter 2 of Ogden's Revised California Real Property Law at page 34:

"A reversion is defined in CC sec. 768 as 'the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.' For example, if A, having an estate in fee simple, conveys a life estate to B, the residue of the fee simple estate that is left in A is an estate in reversion, or simply a reversion, so called because possession reverts to A on termination of B's lesser estate. McGarrigle v Roman Catholic Orphan Asylum (1905) 145 C 694, . . .

"The term 'reversion' is occasionally, but inaccurately, used to describe the rights that vest in a grantor who has conveyed an estate on condition. For example, if A, owner of land in fee simple, conveys the land to B on a condition subsequent (e.g., condition that land shall be used for residence purposes only), A's right to terminate the estate granted on breach of the condition is not an estate in reversion, or an estate of any kind; and although this right is sometimes called a possibility of reverter, it is more aptly defined as a right of reentry or a power of termination. Parry v Berkley Hall School Foundation (1937) 10 C2d 422, . . . "

Such is also consistent with the available legislative history of Statutes of 1953, Chapter 919 which added section 214.3 to the Code. According to the Governor's Chaptered Bill File, Chapter 919/section 214.3 was enacted to permit Pasadena Home for the Aged to retain the welfare exemption on its existing property which was subject to reverter or possibility of reverter rather than forcing

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it to abandon that property as the result of loss of the exemption and to start anew.

Thus, construing "reversionary" as used in section 214.3 to pertain solely to reversions as defined in Civil Code section 768, which we believe is the proper construction thereof, removes any section 214.3 prohibition or type of objection from concluding that the land donated to the Corporation by The Irvine Company for the Center is eligible for the examination.

Accordingly, by copy of this letter, we are requesting Mr. James Barga of the Board's Exemption Section to prepare and issue amended findings upon receipt of the Corporation's amended Articles (May 9, 1989, letter) indicating that the irrevocable dedication and dissolution clause requirements are met with respect to the Corporation's property, including the land donated to the Corporation by The Irvine Company. To the extent my October 31, 1988, letter to Mr. James R. Wright, the Corporation's General Counsel, is contrary or inconsistent herewith, it is hereby superceded.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/wak
2421H

cc: Mr. James R. Wright
 General Counsel
 Hon. Bradley Jacobs
 Orange County Assessor
 Mr. John W. Hagerty
 Mr. Robert H. Gustafson
 Mr. Verne Walton
 Mr. James Barga