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The Honorable Wadie P. Deddeh, Assemblyman, 77th District, has requested an opinion on the following question:

Can a church which uses a portion of its building for housing a Project Headstart program quality that portion of the building for exemption from property taxation under the "welfare exemption" provided in Section 214, Revenue and Taxation Code?

The conclusion is:

A church which uses part of its building for housing a Project Headstart program may qualify that part of the building for exemption from property taxation under the "welfare exemption" provided for in section 1c, article XIII, Constitution of California, and section 214, Revenue and Taxation Code, as long as the requirements thereof are met.

ANALYSIS

A church operates a Project Headstart program in a church meeting room which is ordinarily exempt from property taxes. The question presented assumes that this church qualifies for the church exemption from property taxation in all respects except for the portion which is also being used for the Project Headstart program. It is the use of this latter portion which is in issue. Project Headstart is a federal program that provides certain health, nutritional, education, social, and other services for certain pre-school children to aid such children to achieve their full potential. 42 U.S.C. § 2809. For purposes of this opinion it will further be assumed that whatever payments the church receives for providing the Project Headstart program are solely reimbursements for actual expenses involved in operating the program and that the Project Headstart program is a charitable operation within the meaning of section 214.

California Constitution article XIII, section 1c, establishes the welfare exemption:

> "In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which insures to the benefit of any private shareholder or individual. As used in this section, 'property used exclusively for religious, hospital or charitable purposes' shall include a building and its equipment in the course of construction on or after the first Monday of March, 1954, together with the land on which it is located as may be required for the use and occupation of the building, to be used exclusively for religious, hospital or charitable purposes."

The Legislature then enacted section 214, Revenue and Taxation Code (all references to sections are contained in the Revenue and Taxation Code unless otherwise indicated), in promulgation of the above constitutional provision. This section provides, in part, as follows:

"Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

> "(1) The owner is not organized or operated for profit . . . .
>
> "(2) No part of the net earning s of the owner inures to the benefit of any private shareholder or individual;
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> "(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the to the accomplishment of the exempt purpose;

"(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

"(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;

"(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and 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;

"(7) . . . .

"The exemption provided for herein shall be known as the 'welfare exemption. ' This exemption shall be in addition to any other exemption now provided by law. This section shall not be construed to enlarge the college exemption. Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all of the requirements of this section shall be deemed to be within the exemption provided for in Section 1c of Article XIII of the Constitution of the State of California and this section.

"Property used exclusively for nursery school purposes and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all the requirements of this section, shall be deemed to be within the exemption provided for in Section 1c of Article XIII of the Constitution and this section.

" . . . . "

That part of the building being used for the Project Headstart program will not qualify under the "school of less than collegiate grade" exemption because that part of the building is not being used exclusively for such purposes, Furthermore, the Project Headstart program does not meet the definitional requirements of section 214.4. Likewise, it will not qualify for the nursery school exemption because that part of the building is not being used exclusively for nursery school purposes.

Thus, if the church is to qualify that portion of its building being used for the Project Headstart program, it must do so under the welfare exemption by meeting the general qualifications set out in section 214. Among the general qualifications of section 214 is the requirement that the property be used "exclusively for religious, hospital, scientific, or charitable purposes." It would appear that the property in question is used by the church for dual purposes, i.e., religious with respect to church activities and charitable with respect to the Project Headstart program. The question here presented is can property used for more than one of the purposes designated in section 214 qualify for the welfare exemption. It is our view that if each of the activities, taken alone, would satisfy the requirements of section 214, then the use of the property for several of such purposes would also permit the granting of the welfare exemption. As noted above, section 214 states that the use of the property shall be for religious, hospital, scientific or charitable purposes; that is the property must be used exclusively for any one or more of the designated purposes. Although the word "or" generally denotes an alternative, it can be construed as meaning "and." The word "or" can be so interpreted if such construction is necessary to carry out the intent of the Legislature or because of the context in which the word "or" appears. Houge V. Ford, 44 Cal. 2d 706, 712 (1955); Heidlebaugh v. Miller, 126 Cal. App. 2d 35, 38 (1954).

> Article XIII, section 1c of the California Constitution was adopted on November 7, 1944. In support of the proposition, the proponents made the following statement on the ballot pamphlet in support of the proposition:
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> "To be exempted, property must be owned and used exclusively for the purposes stated . . . .
>
> "This amendment was proposed by the State Legislature by a vote of 90-7. In a state-wide public opinion survey among California voters a substantial majority expressed their conviction that property used exclusively for religious, hospital and charitable purposes should be tax exempt.
>
> "This is sound and timely legislation . . . ." (Emphasis added.)

This statement is a strong indication of the intent to exempt from taxation property used exclusively for any one or more of the stated purposes. The use of the word "purposes" in the plural rather than the singular is another indication that multiplicity of uses was intended.

Finally, there can be no question that many organizations perform functions aimed at serving more than once of the purposes named in article XIII, section 1c. It would simply defeat the underlying objective of the provision if it were to be construed so as to grant exemption only if the property was being used exclusively for only one of the named purposes. This conclusion is evidenced by the following introductory statement of the proponents of the proposition on the ballot pamphlet referred to above:

"This amendment corrects a serious defect in California's Constitution.

"California is the only State which taxes the property of welfare agencies serving youth, old age, the sick and handicapped. Proposition Four authorizes the Legislature to exempt these organizations from property taxes and thus place California in line with the sound and wise practice of the other 47 States.

"These nonprofit organizations assist the people by providing important health, citizenship, and welfare services. They are financed in whole or in part by your contributions, either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

"The ability of these agencies to serve you is reduced when a share of your contribution given to aid their work is absorbed by the property tax."

Thus, the only question that remains is whether or not the specifically enumerated requirements of section 214 have been met in order to qualify that portion of the church building being used for Project Headstart for the welfare exemption.

On the basis of the available facts and the assumptions made at the outset of this opinion, it would appear that requirements numbers 1 and 2 of section 214 are satisfied. With respect to requirements numbers 3, 4 and 5, however, we are unable to form any opinion as to whether or not the church has complied with them because they involve matters of factual determination which must be made on a case-by-case method. Finally, requirement number 6 requires an "irrevocable dedication" of the property to religious, charitable, scientific or hospital purposes as described in section 214.0. Again, we are without facts to ascertain whether or not the church has a statement of irrevocable dedication to these purposes in its articles of incorporation, bylaws, articles of association, constitution or regulations. This statement of irrevocable dedication is mandatory in satisfying requirement number 6 of section 214. However, provided in section 214.01, an organization may amend its articles of incorporation, bylaws, articles of association, constitution or regulations, as the case may be, prior to the following property tax lien date[1] to include a statement of irrevocable dedication and to file a certified copy of the amended document with the State Board of Equitization. Even if the amendment is not made by March 1, under section 270, the organization can make a belated amendment and submit a tardy application for the "welfare exemption" with only a minimal penalty. But in no event will the tax be more than $250 as long as the "welfare exemption" affidavits are filed in accordance with the requirements of section 254.5 §270, subd. (b).

[1] Section 2192 provides that all taxes become liens on property on March 1 preceding the fiscal year for which the taxes are levied.

To summarize, a church which uses part of its building for charitable as well as religious purposes can qualify that part of the building for the "welfare exemption" along as it fulfills the exemption requirements as they are enumerated in section 214 and related sections of the Revenue and Taxation Code.

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