



Memorandum

To : Mr.

Date April 19, 1988

From : Michele F. Hicks

Michele F. Hicks

Subject: Sequoia Seminar Foundation/Creative Initiative Merger

has requested an opinion from legal on whether the Sequoia Seminar Foundation/Creative Initiative merger results in a change in ownership of property previously owned by Sequoia Seminar Foundation. The facts as set forth in a letter dated October 28, 1987, from Mr. _____, the attorney representing Creative Initiative Foundation, as well as facts I obtained from _____ files pertaining to the foundations' application for the Welfare Exemption are as follows.

Sequoia was a nonprofit corporation incorporated in 1948. It owned 233 acres of property in Santa Cruz County which has been tax exempt since 1949. Its membership consisted of a single voting class of members which composed its Board of Directors (Merger Agreement, para. B.)

On April 1, 1986, Sequoia merged with Creative Initiative Foundation pursuant to a merger agreement filed with the Secretary of State on April 1, 1986. (Merger Agreement attached.) Creative is a nonprofit public benefit corporation which has a single voting class of members consisting of its Board of Directors. (Merger Agreement, para. A.) Prior to the merger, there was an overlap of the members of Creative's and Sequoia's Board of Directors. Also prior to the merger, Creative Initiative used Sequoia's property as "accommodations for seminars, meetings, sleeping and dining." (Section B-1, 2, and 3 of 1986 Claim for Exemption.)

After the merger, Creative Initiative was the surviving corporation and now owns the Santa Cruz property. There is no question that before the merger, the two nonprofit corporations were closely intertwined. In addition to having similar goals and overlapping boards of directors, Sequoia Seminar leased its land to Creative Initiative for \$1 a year. In his October 28, 1987 letter, _____ claims that there was no consideration paid for the property by Creative Initiative in the merger. Presently, Sequoia, Creative Initiative, and Beyond War, a

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third non-profit corporation, all have appeals for the Welfare Exemption pending before our Board. The Santa Cruz property was first acquired by Sequoia Seminar, is currently owned by Creative Initiative, and is used by Beyond War.

The only change in ownership statute which expressly deals with non-profit corporations is section 62(k). Section 62(k) excludes from change in ownership:

Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

The exclusion afforded by section 62(k) is not applicable to the present case because section 62(k) requires that both transferee and transferor be regulated by the same religious denomination. (Section 62(k) was enacted by Chap. 615, Stats. of 1981, specifically for the purpose of allowing transfers of property between different dioceses of the Catholic Church to be excluded from change in ownership.) The only other authority which deals with transfers of property between non-profit corporations is a letter dated August 5, 1983 written by [redacted]. I have attached that letter for your review. [redacted] found that the transfer in that case was excluded by section 62(a). I believe that transfer is distinguishable from the present transfer, however, because it appears that one of the non-profit public benefit corporations was the sole member of the other public benefit corporation.

It is my opinion that even though Sequoia and Creative Initiative were in a manner speaking, affiliated prior to the merger, it was an affiliation which does not fall within any of the exclusions to change in ownership. Before the merger, the Santa Cruz property was owned by Sequoia and after the merger, the property was owned by Creative Initiative. Therefore, I believe that there was a change in ownership. I spoke briefly with [redacted] concerning the change in ownership question. It is also [redacted] opinion that the merger resulted in a change in ownership. Because his work on the Welfare Exemption has made him very familiar with the goals and structures of all three corporations, perhaps you would like to discuss this question with him before a final ruling is issued.

MFH:cb

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Attachments