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May 7, 1987

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Dear Mr. :

This is in response to your April 20 and April 30, 1987, letters on behalf of The Copley Press wherein you set forth various reasons why the James S. Copley Library should be eligible for the free public library-free museum exemption from property taxation (article XIII, section 3(d) of the California Constitution and Revenue and Taxation Code section 202(a)(2)).

As we discussed, and as discussed in the May 7, 1987, letter to San Diego County Assessor Gregory J. Smith, copy enclosed, at issue is whether the library-museum is "open to the public" where admittance is by appointment only. As the May 7, 1987, letter indicates, we have been of the opinion for some time now that for property operated as a library or museum to be eligible for the free public library-free museum exemption, the property must be open to the general public on a regular basis, which has not been interpreted to mean open by appointment only. See the March 23, 1973, letter from Mr. John Knowles to Mr. John E. Viano, copy also enclosed.

As to the reasons, contentions, arguments, etc. set forth in your letters and at our April 21, 1987, meeting then:

1. The Library is a museum as well as a library.

Response: The requirements for exemption are the same for libraries, museums and library/museums.

2. The Library is open to the public five days a week from 9:00 a.m. to 5:00 p.m. Persons desiring to visit the library are asked to make appointments.

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Response: As indicated above, we have not interpreted open to the general public on a regular basis to mean open by appointment.

3. The Library's open-by-appointment policy exists because the staff is small, because of security considerations, and because of the impossibility of giving visiting scholars the attention and service necessary while at the same time supervising persons visiting the Library.

Response: To be eligible for exemption libraries, museums and library/museums must be open to the public. Neither the Constitution nor the statutes provides for any exception to this requirement.

4. Since 1982, more than 2,800 persons, including high school and college students, have visited the Library.

Response: Again, determinative is whether property is open to the general public on a regular basis. No doubt, numerous other persons would have visited the Library during this period had there been no open-by-appointment policy.

5. During an average year, the Library receives approximately 100 local scholar visits and 200 requests by mail for copies of historical material.

Response: Neither the requiring of applications for reading privileges together with letters of recommendation from two persons of recognized standing nor the providing of copies of historical material by mail equate to open to the general public on a regular basis.

6. The Library is accessed to the world through the On Line Computer Library Center. This system allows researchers outside the Library to be advised of and access to library materials.

Response: Such limited access to library materials does not equate to open to the general public on a regular basis.

7. The Library is regularly publicized, and it is often the subject of newspaper articles on topics of interest to the general public.

Response: While we advocate that free public libraries and free museums publicize the fact that their properties are open to the general public on a regular, scheduled, ongoing basis, as indicated, determinative is whether the property

is open to the general public on a regular basis. Publication of an "open-by-appointment only" policy does not equate to open to the general public on a regular basis.

8. The library is open 40 hours per week each week of the year, whereas Revenue and Taxation Code sections 217 and 217.1 define "regularly open to the public" to mean open to the public not less than 20 hours per week for not less than 35 weeks of the 12-month period immediately preceding the lien date for the year for which the exemption is claimed.

Response: As indicated, "open to the public" means open to the general public on a regular basis, and we interpret sections 217 and 217.1 to apply to instances in which museum properties are open to the public on a regular, scheduled, ongoing basis, not on an appointment-only basis. Thus, open 40 hours per week each week of the year on an appointment-only basis is significantly less than 20 hours per week for not less than 35 weeks, etc.

9. Other library/museums in Southern California housing both exhibit areas and research libraries are being granted full exemption under section 214, even though portions of the property are used for libraries that are open by appointment only due to security problems and administrative necessity.

Response: Where libraries and/or museums are open to the general public on a regular basis, the entire properties can be eligible for the free public library-free museum or welfare exemption, as the case may be, even though access to a portion of the property might be restricted as, for example, in the case of a rare documents room, a rare jewels room, an exhibit storage area, etc. Thus, these instances referred to are distinguishable from that of the Library. Initially, the primary uses of these properties are for museum purposes, and the museums are open to the public on a regular, scheduled, ongoing basis, whereas the Library, whether considered a library or a museum, is open by appointment only. Also, the purpose of these libraries is to support the museum uses/activities by researching, preparing, etc. museum exhibits as they are added, rotated, etc., whereas the Library's library activities are primary activities rather than support activities for the Library's museum activities. Also, these libraries, while open by appointment only, are open to the general public without the necessity of applications for reading privileges, letters of recommendation, etc., whereas use of the Library's library is restricted.

10. A library property of another organization in Los Angeles County is presently receiving the free public library-free museum exemption even though it is open by appointment only due to security problems and administrative necessity.

Response: Like the instances referred to in 9, above, the purpose of that library is to support the museum uses/activities of a museum by researching, preparing, etc. museum exhibits as they are added, rotated, etc.

11. In the process of interpreting the free public library-free museum exemption, the intent of the legislature must be ascertained.

Response: Being a constitutional exemption, the free public library-free museum exemption is self-executing. Thus, the restatement of article XIII, section 3(d) of the Constitution in section 202(a)(2) of the Code presents no legislative intent for consideration. And while the Legislature may enact legislation to facilitate the operation of a self-executing provision such as article XIII, section 3(d), it has not done so other than to restate the exemption in section 202(a)(2).

12. Other code sections, such as Civil Code section 54.1, Access to public conveyances, places of public accommodation, etc., and Health and Safety Code sections 19955 et seq., Access to public accommodations by physically handicapped persons, establish that the Library is a public accommodation open to the public and therefore subject to the requirements of said codes, and open to the public in such contexts should have the same meaning in other contexts, including that of exemption from property taxation.

Response: We do not regard such Code sections as determinative of the question presented. Section 54.1 requires equal access for physically disabled persons to numerous places and facilities, including places to which the general public is invited, and the purpose of sections 19955 et seq. is to insure that buildings, structures, facilities or improved areas used by the general public, when constructed with private funds, meet Government Code provisions pertaining to access by physically disabled persons. Places to which the public is invited and buildings, etc., used by the public do, no doubt, include places open to the public by appointment only, but as indicated above, we do not equate places to which the public is invited on an appointment-only basis with open to

Mr.

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May 7, 1987

the general public on a regular basis for exemption from property taxation purposes.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosures

cc: Mr. Gregory J. Smith
San Diego County Assessor
Mr. James J. Delaney
bc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton
Mr. Gene Palmer
Legal

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DOUGLAS D. BELL
Executive Secretary

May 7, 1987

Mr. Gregory J. Smith
San Diego County Assessor
1600 Pacific Highway, Room 103
San Diego, CA 92101-2480

Dear Mr. Smith:

This is in response to your March 3, 1987, letter to Mr. James J. Delaney wherein you enclosed copies of claims for the Free Public Library Exemption or Free Museum Exemption filed by The Copley Press, Inc., for the James S. Copley Library at 1134 Kline Street, La Jolla, and informational materials pertaining to the Library, and you asked for our opinion as to the eligibility of the Library for exemption where:

1. The Library is not open to the general public.
2. Admittance is by appointment only.
3. The Library does not loan books or materials

As you are aware, the free public library exemption, as well as the free museum exemption, set forth in Revenue and Taxation Code section 202(a)(2) follows from article XIII, section 3 of the California Constitution, which provides that the following are exempt from property taxation:

"(d) Property used for libraries and museums that are free and open to the public...."

Essential elements then are library or museum use of a property and free public access to the library or museum. In this instance, it appears that the property is being used both as a library and as a museum and that admittance to the Library is free.*¹ Thus, at issue is whether the Library is open to the

¹As evidenced by the enclosed May 25, 1976, memorandum and June 28, 1974, and January 10, 1975, letters, our

Paul W. Hart

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public. As evidenced by the March 22, 1973, letter from Mr. John H. Knowles to Mr. John E. Viano, Corporate Secretary, American Air Museum Society, copy enclosed, the answers to inquiries such as the following have been considered determinative in this regard:

1. Whether there is uninhibited access.
2. Whether there are regular operating hours.
3. Whether there exists a membership, and if so, what access to the property is available to members compared to access available to others/nonmembers.

In this instance, it seems clear that the Library is not open to the public:

1. Access to the Library is inhibited. As you note, the library is not open to the general public, as evidenced by its Reading Privileges and Rules which state, among other things, that an application for reading privileges is required together with letters of recommendation from two persons of recognized standing, testifying to the applicant's qualifications to use the library; reading privileges are granted for specified subjects and limited periods; and they are granted only for the purpose indicated in the application and may be revoked at any time. Further, whether viewed as a library or as a museum, admittance is by appointment only.
2. While the claim forms indicate that the property is open five days per week, eight hours per day, as indicated, admittance is by appointment only, and we do not equate admittance by appointment only during a specified period with regular operating hours which, in our view, is what the article and the section contemplate.
3. While not a membership per se, it appears from the excerpts from the June 15, 1966, Minutes of the Library's Executive Committee Meeting and from the Library's informational materials that the Library's documents, books and other items are available primarily to historians and scholars. While those documents use the phraseology "available for the use of historians and scholars and others" and "available for the use

(Footnote continued from page 1)
interpretation of "free" has been a strict one: "free" means without charge.

of historians, scholars and other qualified persons", we do not equate those descriptions with "public" for purposes of the exemption.

In our view, for property operated as a library to be eligible for the free public library exemption, or for property operated as a museum to be eligible for the free museum exemption, in addition to being free, the property must be open to the general public on a regular basis, and the public must be made aware that such is the case. Thus, there should be a sign or other indicia on the property indicating that property is a library or museum open to the general public on a regular, scheduled, ongoing basis, such as six to eight hours on Mondays, Wednesdays and Fridays of each week; and promotional materials and any advertising, such as telephone advertising, should represent the property as a library or museum open to the public at such times and dates. In this regard, we note that the Legislature has defined the similar language "regularly open to the public" in sections 217 (Works of Art) and 217.1 (Personalty Available for Display in Aerospace Museum) of the Code thusly:

"...open to the public not less than 20 hours per week for not less than 35 weeks of the 12-month period immediately preceding the lien date for the year for which the exemption is claimed."

In sum, while the Library could perhaps become eligible for the free public library exemption or free museum exemption, we do not believe that it is eligible for exemption under the circumstances as they presently exist.

Finally, as you know, properties of libraries and museums are also eligible for the welfare exemption if all the requirements for that exemption are met. Enclosed also is a copy of a summary of our construction of some aspects of the welfare exemption in this regard. As indicated therein, the property must be open to the general public on a regular basis. Admittance by appointment only is not enough.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosures

cc: Mr. James J. Delaney
Mr. Joseph A. Vinatieri