

445.0066 Public Access. To satisfy the "open to the public" requirement for exempting property used as a free museum, the property must be open to the public on a regular basis and the public must be aware that such is the case. In *Fellowship of Friend, Inc. v. Yuba County*, 235 Cal. App. 3d 1190, the court found that the free museum exemption did not apply in the case of a property located in an isolated location that was only open to the public two days a week with little advertising as to its existence of hours of operation, although not for that reason. C 7/15/92.



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July 15, 1992

Dear Redacted:

This is in response to your June 17, 1992, letter concerning museums, the free museum exemption, and the welfare exemption as it applies to museums. Per your letter:

"Our law firm represents a non profit corporation which owns real property and improvements thereon. The improvement consists of a 19th century family residence and related buildings. The buildings have been reconfigured as a museum. The museum is open one Sunday every month and then open at any time by appointment. Many groups are in fact scheduled for periodic visits to the property."

As you may recall, the comparable free public library exemption was the subject of a May 7, 1987, letter from me to Mr. Gregory J. Smith, San Diego County Assessor, concerning the James S. Copley library in La Jolla, which library was operated on a "by-appointment" basis. A copy of that letter is enclosed. As stated on page 3 thereof:

"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."

Thus, we would agree with the view apparently expressed by a member of an assessor's staff that a museum open to the general public one Sunday a month and by appointment does not qualify for the free museum exemption.

The District Court of Appeal has recently agreed that a property's being open to the public is a critical prerequisite to entitlement to the free museum exemption in Fellowship of Friends, Inc. v. Yuba County (1991) 235 Cal. App. 3d 1190. In that case, disallowance of the exemption was upheld where the museum was first open two days a week by appointment only and later, the appointment only policy was discontinued but the museum was only open to the public two days a week:

". . . Accommodations were made to insure that the nonmuseum uses did not interfere with the museum. It appears, however, that little accommodation was necessary because of the museum's limited hours and patronage. During the first year for which an exemption was claimed, the museum was open to the public two days a week by appointment only. During the second and third years, the appointment only policy was discontinued, but the museum remained closed to the public five days of the week.

". . . The issue is whether the Academy's use as a museum was its principal use. Evidence regarding the other uses was probative on this issue. Evidence of plaintiff's appointment policy, the isolated location of the Academy, the lack of publicity and the museum's hours of operation are also relevant in determining the extent to which the property was used as a museum. All such evidence suggested a limited use of the property as a place to store and display the art housed there.

"The trial court concluded plaintiff not only failed to establish the property was used principally as a museum. '[P]laintiff also failed to establish that the property was used even "significantly" or "substantially" as a museum.' . . ." (p. 1197)

A copy of the court's decision is also enclosed. In our view, the decision precludes exemption in the situation you pose.

As to the welfare exemption as it applies to museums, as you know, properties of museums are also eligible for the welfare exemption if all the requirements for that exemption are met. The following is a summary of our construction of some aspects of the welfare exemption in this regard prior to the above decision:

Owned and operated as a museum, the property would have to be open to the general public on a regular, scheduled, on-going basis, and the public would have to be made aware that such is the case. Thus, were the property operated as a museum, such operation would have to be comparable to the operations of museums generally. Thus, there would be a sign or other indicia on the property indicating that the House is a museum open to the general public on a regular, scheduled, on-going basis, such as six to eight hours on Mondays, Wednesdays, and Fridays of each week; promotional materials and any advertising, such as telephone advertising, would represent the House as a museum open to the public; the House would be operated as a museum and would be open to the public; and that persons touring the House, or some of them would be permitted to do so at no charge, or, if charges were made therefor, that any such charges would be minimal.

Additionally, the owner would have to prepare and maintain financial statements, balance sheets and operating statements, pertaining to its operation of the House as a museum, and it would have to submit duplicate certified copies of its financial statements with its claim for exemption. Also, the owner would have to keep records with respect to the dates the House/museum is open to the public; the number of persons admitted without charge, if any; the number of persons charged admission and the respective amounts of such charges, etc.

Very truly yours,

James K. McManigal, Jr.
Senior Staff Counsel

JKM:jd/vina

Enclosures

cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. James Barga