

550.1375

Memorandum

To: Mr. Robert Nunes Date: May 31, 1984

From: Charles J. Graziano

Subject: Sales of Meals by Non-Profit Foundations at Colleges and Universities

This is in reply to your memo of April 18, 1984, to Mr. Donald Hennessy regarding exemption from taxation of the sale of meals to students by certain non-profit foundations at state university and college campuses. Section 6363 of the Revenue and Taxation Code exempts the sale of meals and food products for human consumption furnished or served to the students of a school "by public or private schools, school districts, student organizations, parent-teacher associations..." You ask whether the Education Code provides a reasonable basis for concluding that the foundations at state university and colleges qualify as student organizations exempt under Section 6363.

We understand the foundations in question are nonprofit organizations known as "auxiliary organizations" of the California State University and Colleges, and which are organized and operated pursuant to Education Code Section 89900 et seq., and the regulations promulgated by the Board of Trustees of the State University and Colleges codified under Title 5 of the California Administrative Code Sections 42400 et seq.

In accordance with the applicable statutory provisions and the policies, rules and regulations established by the Board of Trustees, auxiliary organizations are formed to provide certain essential functions integral to the education mission of the parent state university or college campus. The range of appropriate activities engaged by auxiliary organizations include the operation of student body programs, student housing, and student union programs; the handling of funds, grants, trusts, and externally funded projects including research and workshops; and the operation of commercial services such as food service and bookstores. (5 Cal. Adm. Code §42500.)

Because the activities of auxiliary organizations are considered to be essential to the education program of a campus, including service functions, these organizations are required by regulation to operate with the following purposes and objectives:

- “(a) To provide for student self-government and
- “(b) To provide the fiscal means and management procedures that allow the campus to carry on activities providing those instructional and service aids not normally furnished by the State budget, and
- “(c) To provide effective operation and to eliminate the undue difficulty which would otherwise arise under the usual governmental budgetary, purchasing, and other fiscal controls, and

“(d) To provide fiscal procedures and management systems that allow effective coordination of the auxiliary activities with the campus in accordance with sound business practices.” (5 Cal. Adm. Code §42401.)

In addition to performing state university and college functions, auxiliary organizations are closely integrated into the organizational structure of each college campus and are under the control of the chief campus administrator. Each auxiliary organization is governed by a board of directors, which in the case of student body organizations operating as auxiliary organizations, consists primarily of Students, with a representative of the campus president to advise on policy. In the case of all other auxiliary organizations established after April 1, 1969, the governing boards consists of voting members from the administration and staff, the faculty, non-campus personnel, and students. The governing boards of auxiliary organizations established before 1969 typically are composed of membership from the administration, students, and/or faculty.

The president of each sponsoring state university or college campus has considerable authority and responsibility over on-campus auxiliary organizations. The president is responsible for ascertaining that all expenditures are in accordance with policies of the Board of Trustees, the propriety of all such expenditures, and the integrity of the financial reporting made by the auxiliary organizations (Education Code §89900(b)). Additionally, the policies and regulations established by the Board of Trustees impose specific requirements as to the expenditures of funds and record keeping by auxiliary organizations, regulate the form of such organizations, and impose requirements regarding written agreements, employee salaries, working conditions and benefits. Auxiliary organizations operating commercial services such as food services or bookstores are required to be self-supporting. Upon dissolution, the net assets, including any profits derived from commercial service activities, remain with the college campus community since they are either distributed to the parent university or college, or to a successor approved by the president of the campus and by the Board of Trustees.

The legal staff has taken the position that the term “student organization” is limited to an organization of students only which is governed by the students themselves. Although the governing boards of auxiliary organizations are composed in part by students, it is clear that the existence of the formal statutory and regulatory requirements preclude student governance. In our view, therefore, the nonprofit foundations in questions do not qualify as exempt student organizations under Section 6363. However, we note that auxiliary organizations are created to promote the welfare of the sponsoring university or college by providing essential services that benefit the educational institute, students, and campus community as a whole. Furthermore, pursuant to statutory and regulatory provisions, the operations and assets of auxiliary organizations are closely integrated into the school’s organization, and are essentially under the control of the school’s administrator. Furthermore, we note that the Legislature has recognized this close relationship between the state university and colleges and their auxiliary organizations in the context of property taxation. Under Revenue and Taxation Code Section 202.5, personal property leased by the Director of Education to auxiliary organizations for use in authorized activities is deemed property used exclusively for public schools and is exempt from property taxation. Therefore, with all this in mind, it is reasonable to conclude that, at least for purposes of applying the exemption provided under Section 6363, the furnishing of the meals to students by auxiliary organizations is attributable to the auxiliary’s parent

education institution. Accordingly, it is our opinion that the term "public school" as used under Section 6363 of the Revenue and Taxation Code includes auxiliary organizations which are organized and operated under the Education Code and applicable regulations to provide food services to students of the state university and college system.

CJG:ba

cc: Mr. J. D. Dotson
Mr. Glenn Bystrom
District Administrator