



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

(A 75-198)

BRUCE E. BABBITT
ATTORNEY GENERAL

75-72

April 1, 1975

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ARIZONA ATTORNEY GENERAL

Mr. Robert E. Noble, Manager
Commercial & Industrial Section
Arizona Department of Revenue
Division of Property and Special Taxes
Capitol Addition
Phoenix, Arizona

Re: Your letter request of January 3, 1975

Dear Mr. Noble:

In your letter of January 3, 1975, you requested our opinion on the proper assessment ratios to be used for:

- 1) The "Common Area" in condominium complexes;
- 2) Low-income housing subsidized by HUD; and
- 3) Rest homes such as The Beatitudes supposedly operated as non-profit organizations.

In our opinion low-income housing and rest homes fall within Class Three and should be assessed at 27%. The common areas in condominium complexes pose a much more difficult problem. The manner in which title is held and whether some of the condominiums in the complex are rented will affect the assessment ratio.

The classification of property for property tax purposes is found in A.R.S. § 42-136. The assessment ratios for each class are established by A.R.S. § 42-227. Class One consisting of flight property, private car companies, railroads, mines and

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timber, is assessed at 60%. Class Two, assessed at 50%, consists of utilities. The classes with which we are concerned here are Class Three, assessed at 27%; Class Four, assessed at 18%; and Class Five assessed at 15%.

A.R.S. § 42-136 reads, in part as follows:

3. Class Three:

All real and personal property devoted to any commercial or industrial use other than property included in classes one, two or four, including but not limited to land, the improvements thereto or any part of such land or improvements leased or rented for residential use.

5. Class five:

All real property and the improvements thereto and personal property used for residential purposes and not otherwise included in classes one, two, three or four.

(Emphasis added)

Class Four consists of agricultural property and all other property not falling within any of the other classes.

The second and third types of property listed in your letter clearly fall within Class Three as they are rented for residential use. Unless a particular rest home is entitled to an exemption on the facts peculiar to it, it must be assessed at the 27% ratio.

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As noted earlier, the proper classification of condominium common areas is more complex. There are basically three types of ownership of the common areas of condominiums. In the first type of ownership, the developer retains title to the common area and charges fees for the use of the common area. This constitutes a commercial enterprise and should be assessed at the 27% ratio. In the second form of ownership, the homeowners themselves own an undivided interest in the common area. When title to the common area is held in this manner, the common area should be classed as residential property and assessed at 15%. Each owner should be assessed for his interest in the property. This will avoid difficulty when one or more units are rental units placing them in the 27% category. The corresponding interest in the common area will also then be assessed at 27%. The third type of ownership is where title to the common area is held by a homeowner's association, which charges dues to cover upkeep of the common area. This is analogous to a private club and should be assessed in the same manner. In our letter of April 12, 1968, a copy of which is attached, this office advised that private clubs (not commercial clubs) should be placed in the residual Class Four and assessed at 18%.

Very truly yours,

BRUCE E. BABBITT
The Attorney General

BEB:vc

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Bob Noble

DARRELL F. SMITH
THE ATTORNEY GENERAL
WILLIAM E. EUBANK
CHIEF ASSISTANT ATTORNEY GENERAL



April 12, 1968

Mr. Arlo Woolery, Director
DEPARTMENT OF PROPERTY VALUATION
4530 North Central Avenue
Phoenix, Arizona 85012

Re: Classification of Gold^f Courses, Race Tracks
and Property of Fraternal Organizations

Dear Mr. Woolery:

In your letter dated March 18, 1968, you requested an opinion as to the proper classification under A.R.S. § 42-136 for golf courses, race tracks and the property of fraternal organizations such as Eagles, Elks, etc.

The problem is whether these particular types of property fall in Class 3 which is the commercial and industrial classification or Class 4 which is the residuary classification. Commercial in its broad sense comprehends all business, while in a narrow sense it includes only those enterprises engaged in buying and selling goods and services. Reiser v. Meyer, (Missouri) 323 S.W.2d 514, 521; City of Sioux Falls v. Cleveland, 75 S.D. 548, 70 N.W.2d 62, 64. The legislature specifically included rented residential property within Class 3. This indicates that the legislature intended to use the broad meaning of the word "commercial" in the statute. This is in accordance with the tendency of modern usage to give a broader meaning to the word.

Accordingly, a private golf course or a private race track would be in Class 4. A golf course or a race track which charged admission and was open to the general public would be in Class 3. If the objective of those having control

Mr. Arlo Woolery

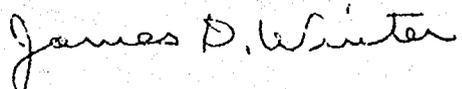
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of the property is primarily social, recreational or philanthropic the property would be in Category 4. If the objective is primarily business or profit, the property is in Category 3. The same criteria applies to the property of fraternal organization. Where part of the property of fraternal organizations is used for purposes of selling food, meals, alcoholic beverages or for any other business purposes, the property should be included in Class 3 to the extent of the area devoted to such use.

Very truly yours,

DARRELL F. SMITH
The Attorney General



JAMES D. WINTER
Assistant Attorney General

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