

November 13, 1991

REPORT TO THE COMMITTEE
ON PUBLIC FACILITIES AND RECREATION

CITY RESERVOIRS - USE OF WATER UTILITY FUNDS TO PAY FOR CONSTRUCTION,
MAINTENANCE OR OPERATION OF VARIOUS FACILITIES USED BY THE PUBLIC
FOR
RECREATION PURPOSES

At the Public Facilities and Recreation Committee meeting on July 24, 1991, the Committee asked this office to "revisit" the issue of using Water Utility money and other assets to support various recreational activities at City reservoirs.

Historically, this office has recommended that the Council and City Manager strictly conform to the spirit and intent of Charter Section 53, which section establishes the Water Utility as a "trust fund" with the assets of the Water Utility required to be used solely and exclusively for the furtherance of the Water Utility's purposes.

Attached as Attachment 1 is a 1989 memorandum on the subject of Water Utility assets, which memorandum includes as attachments past opinions of this office on the Water Utility issue. Attachment 1 also includes a copy of a Superior Court judgement in a 1983 decision which concluded that the City must obtain full fair market consideration in connection with an exchange of Water Utility land.

Nothing has occurred in recent years to change our basic opinion that the Water Utility assets are held in trust for Water Utility purposes. However, since we have not previously addressed the specific issue of the legality of the Water Utility paying for a portion of the costs of facilities utilized by the public at City reservoirs for recreational purposes, that specific issue is addressed herein.

Our understanding is that your committee may support the use of Water Utility funds to construct or maintain facilities such as roads which encircle certain reservoirs, public restrooms on the reservoir property, and various fences and other devices which control the public access and use of the Water Utility property.

If it is necessary for Water Utility purposes to create fences or other access control devices around reservoirs, an expenditure of Water Utility funds for such purpose is legally appropriate.

Likewise, if roads are needed around reservoirs for Water Utility purposes, the fact that the public also uses such roads for walking, cycling, jogging, and similar recreational activities would not, in our opinion, preclude the use of Water Utility funds for construction or maintenance of such roads.

If the City Manager or the City Council establish a policy of allowing the public to have access around reservoirs, and it is necessary to provide restroom facilities to accommodate the public, the construction or maintenance of such restroom facilities appears to qualify for Water Utility funding. The basis would be the Water Utility's need to take all actions necessary to protect the water supply from potential pollution. We have reviewed the Manager's proposed modifications to Council Policy 400-3 and the Manager's recommendation of a three-tiered approach to the management and funding of the City Lakes Recreation Program. There does not appear to us to be a legal problem in proceeding with the policy amendment and the three-tiered funding proposal as described in the Manager's report.

Respectfully submitted,
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City Attorney

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Attachments 1
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