

July 31, 1997

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CAUSE V. CITY OF SAN DIEGO, SUPERIOR COURT CASE NO. 696935 -
APPELLATE COURT CASE NO. D026633

On July 25, 1997, the Fourth District Court of Appeal issued its opinion in the above-entitled case. The case challenged the settlement agreement entered into between the City and San Diego Gas & Electric (SDG&E) concerning a franchise fee dispute and a reduction in the funds allocated to underground utility lines. The trial court had sustained the City's demurrer to all causes of action and had entered judgment in favor of the City. The Court of Appeal, however, reversed the trial court. The Court of Appeal's decision means that, unless the City appeals to the California Supreme Court, the Court of Appeal will return the case to the Superior Court to be heard on the merits.

BACKGROUND

In challenging the settlement agreement, the plaintiff alleged that the City violated Charter section 103 and the Brown Act in failing to properly notice and hold a public hearing on the decision to reduce the funds SDG&E allocates to undergrounding its electricity lines.

A dispute arose with SDG&E related to the underpayment of franchise fees. The City retained outside counsel in anticipation of filing suit against SDG&E. However, in closed session on March 28, 1995, the City Council authorized execution of a settlement agreement with SDG&E which required SDG&E to pay a portion of the disputed franchise fees and reduced the funds allocated to undergrounding power lines. The matter was docketed for open session on April 10, 1995, as a consent matter. Although the full docket noticed the entire matter, the digest only contained a portion of the item.

On February 5, 1996, Plaintiffs filed a complaint seeking a judicial determination that Brown Act and Charter section violations had occurred and seeking to enjoin the City from discussing undergrounding allocation in closed, rather than open, session in the future. Because the Plaintiffs failed to inform the Council within ninety days of the alleged Brown Act violations, the City successfully argued in the Superior Court that Plaintiffs were precluded from proceeding with their case. The Superior Court found that the Plaintiffs had failed to exhaust their administrative remedies and that the matter was not ripe for decision.

THE COURT OF APPEAL'S DECISION

On July 25, 1997, the Court of Appeal reversed the trial court's ruling. The appellate court held that the claims with respect to future violations of the Brown Act or the City Charter were in fact ripe for decision. The court rejected the City's argument that Plaintiffs were required to show a pattern or practice of violations in order to be afforded injunctive relief to prohibit possible future violations. The appellate court found that the Plaintiffs had alleged the existence of an actual controversy and were entitled to proceed with their case in the Superior Court.

We are still evaluating this published opinion. We will be prepared to discuss the matter in closed session on August 12, 1997. If you want us to appeal to the California Supreme Court, the appeal must be filed no later than September 3, 1997. If the City does not appeal, the case will be remitted to the Superior Court to determine whether the City violated the Brown Act or the City Charter.

Deputy City Attorney Deborah Berger handled this matter for the City before both the trial court and the Court of Appeal. A copy of the Court of Appeal's decision is attached.

Respectfully submitted,

LESLIE E. DEVANEY
Executive Assistant City Attorney

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Attachment
RC-97-15

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