

OPINION NUMBER 87-6

DATE: December 30, 1987

SUBJECT: Authority of City Council to Create
Irrevocable Trust

REQUESTED BY: Mayor and Council

PREPARED BY: Jack Katz, Chief Deputy City Attorney

QUESTION PRESENTED

May the City Council, by ordinance or other legislative act, create an "Irrevocable Trust" for funds allocated to Wetlands Acquisition to the extent that future Council decisions could not allocate those funds elsewhere?

CONCLUSION

No. The City Council cannot, by ordinance or other legislative act, create an Irrevocable Trust which binds a future Council in the exercise of its legislative power. A City Charter amendment, duly approved by the electorate, would be necessary to establish such a trust.

BACKGROUND

On September 14, 1987, the City Council amended the annual appropriate ordinance by increasing the General Fund 100 appropriation in the amount of \$3,950,000.00. Of that amount, the sum of \$3,915,000 was placed in the "Wetlands Fund," to be allocated for Wetlands acquisition. Councilmember Wolfsheimer requested that the Council transform the Wetlands Fund into an Irrevocable Trust fund so that the funds allocated therein could not ever be used for any other purpose. Councilmember McCarty thereafter requested that the question of irrevocability of such a trust fund be referred to the Rules Committee for a report thereon from the City Manager and City Attorney. This opinion addresses that matter.

ANALYSIS

The City Council is the legislative body of The City of San Diego, endowed with all the powers necessary, subject to the terms of the Charter, to perform as such. Charter . 11.

The Charter also empowers the Council to enact all ordinances and resolutions Charter .. 15, 16 and 17 and vests in the Council sole responsibility for enacting an appropriation ordinance to provide the necessary funds for the operation of the City. Charter . 71.

The Charter contains within itself several funds designated expressly or in the nature of trust funds. See, e.g., Charter . 55, Cemetery Perpetuity Fund; . 77, Capital Outlay Fund; .

103.1a, Environmental Growth Fund; and . 145, Retirement Fund. Those funds are to be used solely and exclusively for the purposes specified in the Charter. Such constraints upon use of municipal funds as declared in the Charter are binding upon the Council, present and future.

California case law is clear that a City Charter is construed as an instrument of limitation on the exercise of powers by the municipality and its officers. *City of Grass Valley v. Walkinshaw*, 34 Cal.2d 595, 212 P.2d 849 (1949).

Recognizing that the Charter acts as a limitation on the exercise of powers and the fact that some Charter provisions constrain the use of special funds, we now address the matter of establishing, by ordinance, an irrevocable trust fund, such that future City Councils may not reach and reallocate.

It is the general rule that one legislative body cannot limit or restrict its own power or that of subsequent legislatures and that the act of one legislature does not bind its successors. In *re Collie*, 38 Cal.2d 396, 240 P.2d 275 (1952). Furthermore, one legislature cannot enact irrepealable legislation or limit or restrict its own power or the power of successors as to the repeal of statutes. *United Milk Producers v. Cecil*, 47 Cal.App.2d 758, 764, 118 P.2d 830 (1941). Restated elsewhere, one municipal council may not by ordinance bind itself or its successors so as to prevent the future repeal of ordinances. . 8.8, *The Law of Local Government Operations*, Charles S. Rhyne (1980).

The California courts have expressed support for this principle of law even as it related to the power of the initiative. In *Campen v. Greiner*, 15 Cal.App.3d 836, 93

Cal.Rptr. 525 (1971), the appellate court was faced with the issue of an initiative measure proposing an ordinance which would repeal a city utility users' tax and which would also prohibit the city council from imposing or collecting such a tax in the future without a vote of the people. The court ordered the initiative removed from the ballot, holding that the San Jose charter had by implication vested taxing powers exclusively in the city council and that the proposed initiative ordinance would be invalid as an attempt to limit by ordinance the future legislative powers of the city council. In *re Collie*, 38 Cal.2d at 396. The court further stated that:

Limitations upon the taxing power, or expanding the powers of the people of San Jose under the initiative and referendum in relation to taxation may validly be incorporated in the freeholders' charter

emphasis added of San Jose citations
omitted but the charter powers may not be
limited or impaired by an initiative ordinance
repealing a tax levied for general purposes.
Citations omitted.

Campan v. Greiner, 15 Cal.App.3d at 843.

The court, in concluding its opinion, held that the council
by ordinance could not tie its own hands as to the future, and
the initiative carries no greater legislative power than that
possessed by the legislative body itself.

SUMMARY

The Charter of The City of San Diego establishes the City
Council as the legislative body of the City, with all powers
necessary, subject to the Charter, to so perform. The Council is
empowered to enact all ordinances and resolutions and is solely
responsible for enacting appropriation ordinances.

The Charter serves as a limitation on the exercise of powers
by the municipality and its officers. As such, those provisions
in the Charter relating to the disposition of trust funds created
by that instrument must be observed by the legislative body.
Further, the Council may not create, by ordinance, additional

irrevocable trust funds. To do so would limit or restrict its
own power or that of subsequent councils, thereby tying its own
hands as to the future.

Respectfully submitted,
JOHN W. WITT, City Attorney

By
Jack Katz, Chief Deputy

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APPROVED:

JOHN W. WITT
City Attorney