

MEMORANDUM OF LAW

DATE: September 16, 1985

TO: Kevin Sweeney, Rules Committee Consultant

FROM: City Attorney

SUBJECT: Request for Review of Public Arts Advisory

Board Recommendation

On August 12, 1985 the Rules Committee reviewed a request for approval from the Public Arts Advisory Board (PAAB) for two (2) expenditures:

- a) \$7,041 to the Combined Organizations for the Visual Arts (COVA)
- b) \$27,658 to KPBS for a television program entitled, San Diego Art Awakening

This matter was continued to September 9, 1985 and then to September 23, 1985, with a request to this office to report to the Rules Committee on the issue of "regranting" and the propriety of the two requested expenditures.

As to the issue of "regranting" and the authority of the Board, we have repeatedly stressed that as a Charter section 43(a) Advisory Board, PAAB is advisory only. As our Memoranda of Law of December 10, 1984 and January 2, 1985 attached hereto make clear, PAAB is not the conduit for funds but rather the resource for advice in the specialized area of art.

"Regranting" entails a secondary review process whereby a fixed amount of funds are assigned to an agency and then that agency directs the funds to the ultimate recipients. Such "regranting" then requires discretionary authority over the distribution of the funds to reside in the distributing agency.

No such distribution authority resides in PAAB. As a Charter section 43(a) Advisory Board, PAAB is strictly limited to "consult and advise." The distribution of public monies is a legislative power that is reserved exclusively to the City

Council and may not be delegated to any advisory board. San Diego City Charter section 11.1. Hence PAAB has absolutely no authority to distribute or direct the distribution of funds to any individual or organization. The distinction between review and advisory authority was succinctly stated by Justice Cohen in passing on a Police Advisory Board:

A review board is a quasi-judicial body whose

powers are statutory in nature, which body is entrusted with the task of exercising administrative or governmental functions. It hears evidence, considers issues, and makes decisions which are judicial in nature. An advisory board, while it may go about its tasks in much the same manner, is not statutorily charged with governmental functions and its decisions are not judicial. Those decisions are merely recommendations which the receiver thereof is free to ignore.

Harrington v. Tate, 254 A.2d 622, 624; 435 Pa. 176 (1969).

Similarly the recommendations of PAAB may be followed or ignored so it cannot be a grantor or the final "regrantor" of funds. The authority to grant or expend funds in this area is solely and exclusively within the province of the City Council, supra. In support of that conclusion, San Diego Municipal Code section 26.07 C. 1 makes explicit that the Board "shall not involve itself in the process of granting public funds."

As to the recommendations of funding to the Combined Organizations for the Visual Arts (COVA) and to KPBS, the propriety of these recommendations must be measured against the definitions of

San Diego Municipal Code section 26.07.

While the Board is charged with developing and recommending programs to promote public performances and public exhibition of the visual arts, these terms are defined in Section 26.07 D. as involving specified artistic forms that are presented free to the public. In contrast, the COVA proposal involves expenditures for the establishment and maintenance of an office and related equipment. Although a slide registry is referenced, the primary purpose of the expenditure appears to be an overhead expense and not on actual art forms as contemplated in Section 26.07 D.

The recommendation for funding of "San Diego Art Awakening" appears to be an appropriate expenditure to promote a "public performance" as defined in Section 26.07 D. As an "overview of the arts" the production will survey forms of art and focus on recent developments in the art field.

Should the Rules Committee need clarification or further questions answered, we would be happy to review the recommendations involved.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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Attachment

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