MEMORANDUM OF LAW

DATE: October 25, 1985

TO: Sylvester Murray, City Manager

FROM: City Attorney

SUBJECT: Gann Limit; Response to Various Questions Regarding

By memoranda dated September 9, 10 and 30, 1985, you have posed questions concerning various aspects of Article XIIIB of the California State Constitution (Gann limit). As a result of these questions, we have reviewed the entire scope of the procedure under which the Gann limit has been set and believe that some adjustments as set forth below are appropriate. In addition, we here respond to the specific questions posed by your memoranda as follows:

QUESTION #1 (9/9/85 memo)

and

QUESTION #4 (9/10/85 memo):

1. May business license revenue be considered fee revenue so that all City costs associated with administration and enforcement of business licenses can be deducted when calculating the amount of such revenue that is subject to the Gann limit?

4. Currently, the San Diego Municipal Code requires business licenses for the sole purpose of raising revenue. If the Municipal Code was amended to state that the sole purpose of business licenses is to gather information for use by City departments in regulating business, may business license revenue then be considered fee revenue?

ANSWER

No. Business license taxes levied and collected pursuant to Chapter III, Article 1 of the San Diego Municipal Code are taxes. Section 31.0101 of the Code presently provides:

> The provisions of this article are enacted solely to raise revenue for municipal purposes and are not intended for the purpose of regulation.

As to the suggestion that the Code be amended to provide that business licenses (and the taxes for them) are to be used in some regulatory or information gathering program, we should note that, the City has no inherent constitutional power to regulate

business enterprises. The only types of business enterprise which the City may constitutionally regulate are set forth in Chapter III, Article 3 of the Municipal Code and are reported in the Gann limit as "Regulatory Licenses Fees (Vice)."

QUESTION #2 (9/9/85 memo):

2. Are franchise fees truly fees or are they in the nature of taxes? If they are fees, is it permissible to deduct all City costs associated with issuance of franchise agreements and oversight of activities stemming from such agreements when calculating the amount of franchise fee revenue that is subject to the Gann limit?

ANSWER

Yes. In our view, the franchise fees paid by users of city rights of way for the transmission and distribution of gas and electrical energy, cable television signals and the transportation of petroleum products are in the nature of user fees and subject to the computations provided for in Section 8(c) of Article XIIIB. Thus, costs to the City "reasonably borne" by the City in providing the right of way, issuing the franchises, and administering them are permissible deductions, under the "proceeds of taxes" definition.

QUESTION #3 (9/9/85 memo)

and

QUESTION #5 (9/9/85 memo):

3. May lease or rent revenue received by the City be excluded from application to the Gann limit?

5. May parking meter revenue be considered as revenue from fines and penalties or as rent revenue?

ANSWER

3. Yes. 5. Rent Revenue. We believe that lease and rent revenues (including all parking fees and parking meter revenues) are not included within the definition of "proceeds of taxes" and thus may be excluded from application of the Gann limit in computing appropriations subject to limitation.

In this regard we would recommend that a revised computation be made of the FY 1979 Gann Base to delete "Parkade Parking Fees" from the computations and that parking meter revenue, and revenues derived from stadium parking fees and parkade parking fees be deleted from all Gann formulas.

QUESTION #4 (9/9/85 memo):

4. Revenue from fines and penalties is excluded from application to the Gann limit. Would a surcharge added to parking violations for the purpose of funding capital improvement projects be considered part of the fines and thereby be excluded from application to the Gann limit?

ANSWER

Yes. As indicated in the Legislative Counsel's Opinion of July 6, 1979, (copy attached as Enclosure (1)), revenue from fines and penalties is excluded from application to the Gann limit. It seems to us that a surcharge added to parking violations is still a fine or penalty and thus continues to be exempt from the application of the limit.

QUESTION #6 (9/9/85 memo):

6. The City's Gann limit is based on the amount of proceeds of taxes that the City appropriated in FY 1979. Operation of the City Parkade in FY 1979 provided revenue in excess of cost. Such excess is defined in Article XIIIB of the State Constitution as "proceeds of taxes." The amount of the excess was included in calculation of the City's Gann limit. Consideration is being given to creating enterprise districts for certain operations such as the City Parkade. If this is done, would the City's Gann limit have to be reduced by the amount of the excess included in the original calculation of the limit? Note that in FY 1979 the City Parkade was not being subsidized by tax revenue, but was earning money in excess of cost.

ANSWER

See answer to question #3 and #5 just above and #1 next below.

QUESTION #1 (9/10/85 memo):

1. Must a separate Gann limit be established on each entity of government such as a redevelopment agency, enterprise district, or other special district operating within the City of San Diego? If so, what obligation or liability is there to the City of San Diego if one of those entities exceeds its Gann limit?

ANSWER

A separate Gann limit must be established on each entity of our local government. Section 8(d) defines local government as any city, county, city and county, school district, special district, authority or other political subdivision of or within the state. This then should apply to The City of San Diego Redevelopment Agency, The City of San Diego Housing Authority, The City of San Diego Industrial Development Authority, The San Diego Stadium Authority and The San Diego Planetarium Authority.

As to the Redevelopment Agency, Section 33678 of the California Health and Safety Code exempts tax increment financing from Gann limit requirements. In Bell Community Redevelopment Agency v. Woolsey, ----- Cal.App.3d ----- 214 CR 788 (June 1985) the validity of the exemption was recently upheld. Since none of the other entities referred to

above receive any proceeds of taxes as defined in Section 8(c) of XIIIB, and have no taxing power, it seems to us then that the limitations of Gann apply to the City only.

The City has no "special districts" within its framework and we do not understand your reference to "enterprise district." We see no advantage to using this type of accounting for purposes of the Gann limit computations and strongly recommend against it.

QUESTION #3 (9/10/85 memo):

3. Does the Gann limit have to be adjusted if the City terminates one of its programs or activities that is supported by proceeds of taxes?

ANSWER

No. Section 3 of XIIIB provides:

> SEC. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:
>
> (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes

effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) In the event of an emergency, the appropriation limit may be exceeded provided that the appropriation limits in the following three years are reduced accordingly to prevent

an aggregate increase in appropriations

resulting from the emergency.

As you can see this Section contemplates changes to the Gann limit if the cost of providing a service (program) is transferred from one entity of government to another or from certain revenues all of which would be included within the "proceeds of taxes" definition to other revenue sources which are subject to a reduction computation for "costs reasonably borne." It says absolutely nothing about an adjustment if the service (program) is terminated entirely. The thrust of the adjustment concept is then for adjustment to be required only if some other entity continues to provide the service or the cost of providing it is placed on some kind of new license, charge or fee which gives the governmental entity providing it a new and additional revenue source. If the program is completely terminated the monies that funded it (irrespective of their classification under Gann) may be used for any other public purpose and no Gann limit adjustment is required.

The questions raised by your September 30, 1985 memorandum regarding the City pension plan funding will be answered in a separate memorandum, as will the issues concerning state and federal mandates. They will be issued shortly.

JOHN W. WITT, City Attorney

By

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Assistant City Attorney

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Enclosure (1)

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