

DATE: November 13, 1986

TO: John Lockwood, City Manager
FROM: City Attorney
SUBJECT: San Diego Sports Arena - Rent From Parking Lot
Use

One of your departments has asked whether, under the Sports Arena lease documents, the City is entitled to the payment of some rent as a result of the use of the parking lot for swap meets. Please see the attached memorandum of law prepared by Curtis Fitzpatrick in 1981.

I discussed this matter with Mr. Fitzpatrick and he indicated that there was no specific discussion of swap meets in his 1971 negotiations with Mr. Peter Graham. Neither the ground lease nor the operating sublease address the potential use of the property for swap meets.

The property is leased "for the purpose of the construction, operation and maintenance of an indoor sports arena . . . plus other uses incident thereto . . ." Article IV Ground Lease Agreement. The operating sublease, in Section 2, specifies that the property is to be used "as a sports arena, convention center, exhibit hall or other type of center. Such use shall include, without limitation thereto, the presentation of athletic contests, conventions, exhibits and other types of similar performances and all other incidental and related uses including off-street parking for motor vehicles."

The law with regard to percentage rent leases is that property leased for specified purposes may only be used for such purposes in the absence of the consent of the lessor to utilize the property for other purposes. It does not seem that the use of the parking lot for swap meets falls within the authorized uses as set forth in the ground lease and the operating sublease. The operating sublessee, therefore, has no right to use the parking lot for swap meet purposes without the City's expressed consent.

Please see the attached memorandum prepared by a legal intern for this office, which memorandum addresses various issues relating to the City's right to receive rental from the swap meet operation. Also please see the recent letter received from attorney Larry Segal regarding this subject. It appears that the City can and should indicate to its lessee and to the operating sublessee that the swap meet use of the parking lot is not an authorized use under the lease documents and that, if the intent is to continue to utilize the property for swap meet purposes,

the City will require the payment of a reasonable rental as consideration for such use. Furthermore, the City should consider requiring the payment of rent for the past four years as a condition to approving any future use, or if a reasonable rent cannot be agreed upon, as consideration for the past unauthorized use.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:731.1.11(x043.2)

Attachments

ML-86-130