

MEMORANDUM OF LAW

DATE: December 19, 1986

TO: John Lockwood, City Manager  
FROM: City Attorney  
SUBJECT: Balboa Park - Naval Hospital Property - Chapel  
- Future Utilization

In October, 1986, this office received the attached letter from the San Diego County Ecumenical Conference. While it is not the practice of this office to prepare legal opinions for parties other than the Mayor and City Council and City departments, it appeared appropriate to review the Ecumenical Conference's request in view of the fact that most or all proposals dealing with the Naval Hospital property to be returned to the City involve the proposed retention and use of the Naval Hospital chapel.

Attached is a memorandum prepared by a legal intern which concludes that while the chapel may be retained in use as a veterans' war memorial building, it may not be retained in use as a religious facility.

The one area not addressed in the legal intern's memorandum involves Article 16, Section 5, of the Constitution of the State of California, which provides in pertinent part:

(No city) shall ever make an appropriation or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any . . . institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by . . . any city . . . for any religious creed, church, or sectarian purpose whatever . . .

The language of the Constitution and the cases interpreting the Constitution are quite clear that neither City property nor funds may be used in support of religious activities. *Johnson v.*

*Huntington Beach Union High School District*, 68 Cal.App.3d 1, 137 Cal.Rptr.43 (1977); *Los Angeles County v. Hollinger*, 34 Cal.Rptr. 387, 221 Cal.App.2d 154 (1963); 1 Ops.Atty.Gen. 161; 37 Ops.Atty.Gen. 105.

The primary exception to the above rule is that City property not needed for public purposes may be leased or sold to anyone, including religious organizations, for fair market value or fair market rent. However, Balboa Park cannot, of course, be

considered surplus property available for such use, nor is a religious facility a park and recreation use authorized in the Park. On the other hand, if the City makes any facility or facilities in Balboa Park available to all organizations and individuals for the purpose of exercising their constitutional right of free speech, individuals or groups espousing religious concepts or ideals must be granted equal rights of use to those granted to other organizations. For example, if the City were to determine to make a particular building available to the general public on a no fee basis for the purpose of allowing communication on whatever subject the person or organization desires, there would be no legal problem with making the same facility available to individuals or organizations for the purpose of communicating their thoughts on religion.

One complicating factor in the proposed retention of the Naval Hospital chapel is the fact that religious symbols and pictures are incorporated into the structure, particularly the stained glass windows. While it would generally not be legally proper to allow such symbols to be constructed in a dedicated public park, with or without the use of public funds, the factual situation where the chapel was legally constructed while not in park use by the Navy provides a somewhat unique circumstance which, in our opinion, would not require the removal of the religious symbols when the property is returned to the City. If and when significant costs or repairs are necessary in connection with the maintenance or refurbishment of the stained glass windows or any other religious symbols, it would be appropriate that additional legal review be made to ascertain legal alternatives to the obvious problems which would be created by any such proposed expenditures or maintenance.

In summary, both the Federal and State constitutions preclude free use and operation of the Navy chapel in Balboa Park as a multi-faith facility. Further, the operation of such a facility in a dedicated park would also be inappropriate under the City's charter. Also, the mere continued presence of the existing religious symbols incorporated into the Navy chapel may be difficult to justify but should probably be allowed to remain so long as no significant public funds are utilized for the maintenance and repair of the religious symbols.

Finally, a proposal to utilize the Navy chapel for a veterans' war memorial to be available to the public for appropriate civic and cultural and recreational activities is a legal alternative.

JOHN W. WITT, City Attorney

By

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Attachments 2

cc Mayor and Council

San Diego County Ecumenical Conference

ML-86-145