

DATE: March 17, 1986

TO: Dave Flesh, Supervising Economist, Financial
Management

FROM: City Attorney

SUBJECT: Gann Limit; Population Count, Adjustments

This is memorandum number seven (7) in a series responding to questions which have risen in connection with Article XIII B of the California State Constitution (Gann Limit).

Your memorandum to us of March 14, 1986 asks what, if any, adjustment should be made in the estimated population count of the City if it appears that errors in count have been made. Your memorandum and its enclosure recite a somewhat complex factual situation involving the estimated number of undocumented aliens who may be residing within the City limits. Rather than repeat those facts here, I am attaching your memorandum and its attachment as Enclosure (1) to this memorandum.

With respect to the general subject of the Gann Limit, the State has enacted a series of statutory provisions which are codified as Division 9, Title I (Sec. 7900, et seq.) of the California Government Code. A copy of those provisions is attached for your ready reference as Enclosure (2). As you can see from a reading of Section 7901(c), a "change in population" is defined by reference to estimates made by the California Department of Finance pursuant to the provisions of Section 2227 of the California Revenue and Taxation Code. (This is the method prescribed by the Legislature as authorized by Section 8(F) of Article XIII B).

Section 2227 of the Revenue and Taxation Code provides:

Sec. 2227. Cities and counties; estimate of
percentage change in population;
data request; failure to supply
data

Annually, the Department of Finance shall transmit to each city and each county an estimate of the percentage change in the population of the city or the county. Such estimates shall indicate the percentage change in the resident population, excluding the population in state mental and correctional facilities and in federal correctional and federal military installations, of each city and each county between January 1 of the prior year and January 1 of the current year. Such

statements shall be transmitted by May 1. The Department of Finance may request data from any local agency to be used to prepare the population estimate required by this section. If any local agency fails to supply the requested data, the department is not required to provide an estimate for that agency, but may do so using the method deemed most appropriate by the department.

As you can see from a review of Division 9, Title 1 (Enclosure (2)) and Section 2227 of the Revenue and Taxation Code set forth above, there is nothing contained in those provisions which would call for the population change computations which you indicate the State Department of Finance is proposing. It would seem to me that their position of proposing to treat subvention formulas in one fashion and the Gann population increase formula in another is not only illogical but entirely without statutory authority. Clearly the City should require an explanation. However, we don't believe your reference to the "Spirit of 13" document is entirely relevant in this case, because it appears to be referring to adjustments following the Federal census every ten (10) years.

Noting your memorandum to Scott Harvey, Director of Intergovernmental Relations, I suggest that if the State continues to follow this tact we be prepared to file a formal protest with the Department of Finance as soon as possible. Please keep us informed of the status of this issue.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:js:930.38.1(x043.2)

Enclosure

ML-86-30