

MEMORANDUM OF LAW

DATE: April 10, 1986

TO: Police Department  
FROM: City Attorney  
SUBJECT: Police Department's Involvement in Rape  
Awareness Video

By memorandum dated February 26, 1986 from Lieutenant C.R. Ellis, Public Affairs, you pose five questions regarding the San Diego Police Department's involvement in the production and endorsement of a rape awareness video. The proceeds from the sales of the rape awareness video will be used to produce other training tapes for sales to law enforcement agencies and the general public.

Your questions are:

1. Can the San Diego Police Department provide technical information on rape awareness through our Sex Crimes Unit?
2. Can the Police Department provide police assistance; i.e., use of vehicles, traffic control, during the video taping?
3. Are there any legal problems with the Police Department providing assistance to a nonprofit corporation in the production of the tape?
4. Upon completion of the filming of the video, can the San Diego Police Department officially offer its endorsement to the project?
5. What about an endorsement by Chief Kolender?

In answer to your first question, the Police Department may provide technical information concerning the investigation of rape cases. However, the Police Department should not disclose information pertaining to actual cases.

In response to your second and third questions, police assistance could constitute the making of a gift of public funds which we have opined in the past to be prohibited by San Diego City Charter section 93. It provides in part as follows: "The credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor."

A similar restriction in the state constitution has been held not to apply where there is a public purpose for funds. Where the appropriation is for a public purpose, the benefit to the state from such an expenditure "is in the nature of consideration

and the funds expended are therefore not a gift even though private persons are benefited therefrom." *County of Alameda v. Carleson*, 5 Cal.3d 730, 745-746 (1971), appeal dismissed, 406 U.S. 913 (1972) citing *County of Los Angeles v. La Fuente*, 20 Cal.2d 870, 876-877 (1942), rehearing denied, 319 U.S. 783 (1942); *County of Alameda v. Janssen*, 16 Cal.2d 276, 281 (1940).

The concept of public purpose has been liberally construed by the courts, although still scrutinized in the event the purpose has no reasonable basis, i.e. is totally arbitrary. *Mannheim v. Superior Court*, 3 Cal.3d 678, 691 (1970). Examples of expenditures and appropriations deemed proper as public purposes include: issuance of revenue bonds to provide housing, *Redevelopment Agency of San Pablo v. Shepard*, 75 Cal.App.3d 453 (1977); appropriation for payment of claims of fishermen whose equipment has been rendered valueless by anti-netting legislation, *Dittos v. Cranston*, 53 Cal.2d 284 (1960); unclaimed impounded animals surrendered pursuant to a city ordinance to private research laboratories and institutions for medical research, *Simpson v. City of Los Angeles*, 40 Cal.2d 271, appeal dismissed, 346 U.S. 802, rehearing denied, 346 U.S. 880 (1953); school district contract with private corporation for research and development activities which ultimately proved unprofitable, *California School Employees v. Sunnyvale Elementary School District of Santa Clara County*, 36 Cal.App.3d 46 (1973).

However, Administrative Regulation 45.50, section 3.1 states that "City labor, equipment, materials and supplies shall not be used for personal or private purposes, either on City premises or elsewhere, by City employees or others, unless specifically authorized to do so by Council approval." Since Council cannot make a gift of public funds, it is clear that the intent of Administrative Regulation 45.50, section 3.1, mandating Council approval for the use of city labor and equipment for personal or private purposes, necessarily requires Council to first determine

that the anticipated use serves a public purpose. Thus, the Police Department must seek Council approval before city personnel and property are used for the production of the video.

Once Council determines that the use of city labor and equipment serves a public purpose, a court will generally not question that judgment. In *City of Roseville v. Tulley*, 55 Cal.App.2d 601, 608 (1942) the court stated:

The question as to whether the performance of an act or the accomplishment of a specific purpose constitutes a "public purpose," and the method by which such action is to be

performed or purpose accomplished, rests in the judgment of the city council, and the judicial branch will not assume to substitute its judgment for that of the governing body unless the latter's exercise of judgment or discretion "is shown to have been unquestionably abused." (City of Oakland v. Williams, 206 Cal. 315 274 P.328, p. 327; emphasis added.)

At issue is the use of city vehicles (police vehicles) and city personnel (police officers) to participate and assist in the filming of a rape awareness video at taxpayers' expense. Although the producers and distributors of the video will benefit from such use, Council could find that the value to the public of having a video on rape awareness is in the nature of consideration and therefore not a gift of public funds. The use of city personnel and property to produce the video appears to serve a legitimate public purpose. The Police Department and other law enforcement agencies would be able to use the video in their training and rape education programs. In addition, the video would enable the public to educate itself on rape. The Police Department's involvement would insure the accuracy of the video.

With regard to your fourth and fifth questions, Council Policy No. 000-23 prohibits endorsements, either implied or direct, of commercial products by the City and its employees. Council Policy No. 000-23 states in part:

1. No City employee, in his/her capacity as a City employee, shall endorse a product or service nor comment on that product or service if it is the intent of the solicitor of the endorsement, or of the vendor or manufacturer of that product or service, to use such comments for purposes of advertisement.

Since we understand the present production company to be nonprofit, we see no direct violation of this policy. However future uses of this video are unpredictable. Therefore we believe the prudent course would be for the Police Department or Chief Kolender to endorse in general the value of rape awareness and the technical accuracy of the video after its production and after reviewing the completed product.

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By

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