

MEMORANDUM OF LAW

DATE: April 17, 1986

TO: Dave Grim, Property Department

FROM: City Attorney

SUBJECT: Public Streets and Roadways - Incidental Uses

By memorandum dated March 17, 1986, you indicated that the City intends to place a major sewer line within certain streets. You asked whether it is permissible to place sewers in areas which were granted to the City or to predecessors in interest "for public roadway" or "public highway" purposes. You further asked whether a sewer line can be placed in existing roadways which have been paved and maintained for a number of years but for which there is no known grant of easement for street purposes.

The general rule is that where the City has an easement for street purposes it can utilize the street easement area for street purposes and incidents thereto. Sewer lines, water lines and gas and electric lines have all been commonly placed in street easements as incidental uses to the primary street use, and such uses may be reserved when a street is vacated. 8330 Calif. Streets and Highways Code.

With regard to streets for which there is no known official grant of easement, depending upon the factual circumstances, the street easement may either have been acquired by prescription or through an implied dedication. Rather than discuss the rather fine distinction between an implied dedication and a prescriptive right, it would seem that, since the City, in the fact situation you described, is proposing to utilize streets which have been in existence for fifty years or more, the City may reasonably assume that it has a general right to utilize the right-of-way for general street purposes including incidents thereto.

In the highly unlikely event that an owner of adjacent property claims that the City has no right to install a sewer in the street right-of-way, the City could, of course, use its power of eminent domain to acquire the necessary right to maintain the

sewer line. Since a street easement is considered to have the same value as the fee interest, the City would presumably have to pay a nominal sum for the additional right to install a sewer in the unlikely event we ever reached the point of having to pay anything at all.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Deputy City Attorney

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