MEMORANDUM OF LAW

DATE: January 30, 1986
TO: Ed Ryan, City Auditor and Comptroller
FROM: City Attorney
SUBJECT: Gann Limit; Additional Questions Regarding

This will be our fourth memorandum of law regarding the so-called Gann Limit, i.e., Article XIIIB of the California State Constitution. Earlier memoranda addressing issues raised by Gann are dated October 25, November 20 and December 30, 1985. By your memorandum of January 24, 1986, you ask:

QUESTION 1

In computing the fiscal year 1978-79 base appropriations subject to limitation, what treatment should be given to the sum of $8,243,000 received from the State of California in fiscal year 1978-79 pursuant to State law (AB 8)?

ANSWER 1

The entire sum should be included in your computations for the 1978-79 base year. Section 8(h) of Article XIIIB provides that the "appropriations limit" of each entity of government for fiscal year 1978-79 shall be the total of the appropriations subject to limitations of such entity for that fiscal year. Section 8(b) and 8(c) provides that with respect to local government, "appropriations subject to limitation" and "proceeds of taxes" shall include subventions received from the State, other than those received pursuant to Section 6 of Article XIIIB, i.e. "State Mandates." Thus, it seems abundantly clear that this sum, which was allocated by State law as a general financial aid to local government, should be included in its entirety in the 1978-79 base.

This view is confirmed by the Spirit of 13, Inc. Summary at pages 10 and 11 and by the April, 1980 League of California Cities Uniform Guidelines, pages 10 and 11.

QUESTION 2

Should the entire monetary sum carried-over from fiscal year 1977-78 be included in the computation of the 1978-79 base appropriations subject to limitation?

ANSWER 2

Arguably no. To the extent that it is possible to rationally distinguish "Proceeds of Taxes" from "Non-proceeds of Taxes" in that carry-over sum (if at all), we believe it is fair to say

that Article XIIIB contemplates that distinction and division. However, that may be asking for more than any review of the 1977-78 fiscal year accounts would allow. (Both the Spirit of 13, Inc. Summary (pages 33 and 34) and the League of California Cities Guidelines (pages 13 and 14) appear to agree.)

Thus, unless one can say with certainty that all of the carry-over sum is clearly earmarked as "proceeds of taxes" (or state subventions (not for mandated programs)), then we believe the carry-over sum should be divided in such a fashion as to represent a proportionate "proceeds of taxes" to "non-proceeds of taxes" and accounted for in the base year accordingly.

QUESTION 3

Should appropriations subject to limitation include "tax monies allocated" to lighting, landscape, maintenance, improvement and park service districts?

ANSWER 3

No. In our view these kinds of "districts" are generally assessment districts of one form or another and monies normally allocated to them are not "proceeds of taxes," as defined by Section 8(c) of Article XIIIB. However, your use of the phrase "tax monies allocated" concerns us. Assessments are generally not considered taxes but we do not understand your use of the phrase "tax monies." If true "tax" monies, i.e. clearly property tax, sales tax, etc., are allocated, they should be included in the appropriations limitation calculations.

QUESTION 4

Should a deduction from the appropriations subject to limitation be made for all monetary sums set aside as debt service irrespective of the source of the funds?

ANSWER 4

Yes. As long as the payment to be made qualifies as "debt service" under Section 9 and 8(a), it is irrelevant as to the source of the funds, (i.e. proceeds of taxes or not).

Section 9 provides that debt service is not to be included in "appropriations subject to limitation." Section 8(g) defines "debt service" as appropriations required to pay the cost of interest and redemption charges (i.e. principle and interest) on indebtedness existing or legally authorized as January 1, 1979 or on bonded debt thereafter approved by the voters.

We assume the indebtedness you are referring to is that heretofore approved by the voters for open space acquisition. The fact that some portion of the franchise fees paid by San Diego Gas and Electric Company are committed under the City Charter to be used to amortize and redeem those bonds is of no

import insofar as computing the appropriations subject to limitation. Thus, even though in our view franchise fees need not be included in the computation of the appropriations limit because they are not "proceeds of taxes," sums of money from those fees may also be deducted from the appropriations limit computations because Article XIIIB makes no distinction as to the source of "debt service."

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