

MEMORANDUM OF LAW

DATE: February 23, 1987

TO: Lucille Goodman, Property Department
FROM: City Attorney
SUBJECT: Pioneer Memorial Park - Request for Access
Easement

By memorandum dated February 9, 1987, you asked for our comments as to the legal status of a road, over a portion of Pioneer Memorial Park, which is used for access to private homes. Your memorandum included the attached letter from John P. Finch, which letter describes the history of the road.

As to the issue of whether long term private use of an access road over a portion of Pioneer Memorial Park may have resulted in prescriptive rights vested in owners of the properties accessed, the rule is that no private individual can establish prescriptive rights in any governmentally owned property which has been dedicated to a public purpose. It appears that the cemetery would qualify as a public purpose.

In addition, since 1935, Section 1007 of the California Civil Code has specified that no person can obtain prescriptive rights in any City-owned property whatsoever. Therefore, it seems unlikely that any claim of prescriptive rights could be established even assuming that all the historical use described in Mr. Finch's letter could be documented.

The property being utilized for access was, as stated in Mr. Finch's letter, dedicated to public park purposes in 1970. Mr. Finch's letter indicates that the dedication was "by resolution." However, it may be that it was, in fact, dedicated by ordinance. Section 55 of the City's Charter specifies that land dedicated to park use by resolution may be utilized for other than public purposes at the option of the City Council. On the other hand, if the property has been dedicated by ordinance, the Charter section still allows the dedication of a public street through the park. Such action would require an ordinance of the Council.

In summary, it appears unlikely that prescriptive rights could be established for the road in question. However, if the City Council wishes to establish a public street or alley in the area, the Council has that authority. The question of whether or not the private owners would pay for the right-of-way as well as any needed right-of-way improvements is a policy question to be answered by the Manager and the Council.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:263(x043.2)

Attachment

ML-87-14