

MEMORANDUM OF LAW

DATE: May 13, 1987

TO: Joyce Selber, Public Arts Administrator
FROM: City Attorney
SUBJECT: Interpretation of Municipal Code Sections
26.07.2 e. and 26.07.2 f.

By memorandum concerning the above-entitled subjects, you asked a series of questions to which we respond seriatim.

1. Can 26.07.2 e. be construed to include funding for visual arts projects?

Section 26.07 e. of the San Diego Municipal Code is definitional and as such simply defines the separate fund established under The San Diego Percent for Art Ordinance. The disbursements made from this fund are only restricted by Section 26.07.2 c. which defines "Art in Public Places." This is an expansive definition which specifically allows "portable as well as permanent" art. From this and the phrase "may include, but shall not be limited to," we believe visual arts are included except for the "media arts" referenced in the last sentence of 26.07.2 c.

2. Is Section 26.07.2 f. pertaining to "Supplemental Funding" broad enough to fund "temporary exhibitions" to promote the works of local artists?

This question cannot be answered in the abstract and hence must await a concrete proposal. In general the Supplemental Funds are bound by the same restrictions as the Fund for Public Art. Although the source is different, they are donated to and "placed in the Fund for Public Art" Section 26.07.2 f. Hence they take on the same restrictions. Moreover we repeat the caution contained in our September 16, 1985 Memorandum of Law that spending money solely for overhead expenses is improper.

3. Where a work of art is funded by multiple sources, who owns the art?

Generally a composition of art is owned exclusively by the artist. California Civil Code section 980. However, where several persons are jointly concerned in the production of art, unless otherwise agreed, the composition is owned by them in equal proportions when the product is indivisible. Where it is divisible, it is owned in proportion to the contribution. California Civil Code section 981; 43 Cal. Jur.3d, Literary and Artistic Property, section 7 (1978).

Hence all proposals for funding, partial or full, should clearly address ownership in a formal agreement.

4. Is a public arts project fundable if the project is done by a private developer as a "turn-key" development project?

Again this question cannot be answered in the abstract. In general there are no restrictions on funding tied to who is building the project. Care of course must be taken to follow the procedure for design and placement set out in Section 26.07.4 b. and f.

We trust this gives you the direction you need and we remain available to review specific requests.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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