

MEMORANDUM OF LAW

DATE: November 7, 1988

TO: George Loveland, Director, Park and  
Recreation Department  
FROM: City Attorney  
SUBJECT: Balboa Park - Proposed Uses of Building 8,  
Naval Hospital Site - USIU - San Diego Opera  
Association

By memorandum dated November 1, 1988, you asked whether proposals by United States International University and San Diego Opera Association to utilize one of the Naval Hospital buildings being transferred to the City in Balboa Park would be legal uses of the dedicated park property. Copies of the lease proposals from USIU and the Opera Association were attached to your memorandum.

The USIU concept appears to propose use of the Naval Hospital building as a medical library and medical training center. While the proposal identifies certain activities for the building which would benefit the general public, the basic purpose nevertheless seems to be the medical training facility and library, with substantial classroom and office space.

As discussed in the attached memorandum of law dated February 11, 1986, such medical facilities do not qualify as legal uses of the subject property which, as you know, was rededicated to public park use by City Council ordinance several years ago.

With regard to the San Diego Opera Association lease proposal, it is unclear whether the primary function of the lease would be the production and presentation of "opera, musical theatre, operetta and other vocal arts" as specified in the proposed lease provisions, or whether the primary function of the building would be to provide office space, storage rooms and guild meeting space together with rehearsal, auditions and training sessions.

The production and presentation of opera is a valid and legal use of dedicated park land. Such an operation would be similar to the existing Starlight Opera and Old Globe presentations presently taking place in Balboa Park. On the other hand, use of Balboa Park property for the primary function of offices for administrative staff, auditions, rehearsals and such, for presentations to take place outside of Balboa Park, would not likely withstand a legal challenge based upon such use being an improper use of dedicated public park property.

Therefore, assuming that the building in question is not suitable for the San Diego Opera Association's major presentations, the use of the building for the primary purpose of offices and training and storage would not, in our opinion, be a valid public park use.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:710.4(x043.2)

Attachment

cc Maureen Stapleton

Dave Twomey

ML-88-94