

MEMORANDUM OF LAW

DATE: November 2, 1989

TO: Ed Ryan, City Auditor & Comptroller

FROM: City Attorney

SUBJECT: "Utility Funds" in the Public Liability Reserve

Your memorandum of October 23, 1989 to Assistant City Attorney Ron Johnson regarding the above-captioned matter has been referred to me for a reply.

You indicate in your memo that approximately \$1.2 million of the current Public Liability Reserve is "Utilities Department monies." You ask if these funds may be used for general City claims.

In our view your question apparently involves both a legal issue and a policy issue; the latter of which should be addressed by the City Manager. The use of the phrases "Utility Funds" or "Utilities Department monies" are not sufficiently descriptive of the source of funds. As you know the City's "Water Utilities Department," authorized by San Diego Municipal Code Section 22.1801(b), actually functions as a combined water supply and sewer service operator. Thus, the phrases "Utility Funds" and "Utilities Department monies" can presumably mean monies derived from the sale of water service to customers (or capacity charges imposed upon water service users); or sewer service charges (or capacity charges imposed upon sewer service users).

From our point of view the water service and water capacity charges are the only ones governed by Section 53 of the City Charter and require complete segregation, accounting, and use in strict accordance with the provisions of Charter Section 53. I am advised by your Assistant Joe Lozano, that of the approximately \$1.2 million, \$422,929 is in that category. Thus, we advise you that under no circumstances may those funds (\$422,929) be used to pay general City claims or any other claims except those arising from the water supply service provided by the City.

However, aside from certain funding requirements contained in the covenants relating to the outstanding sewer revenue bonds

which call for monies sufficient to pay principal and interest on the bonds to be held in reserve and assure that general maintenance and operating criteria are met, there are no legal impediments to the use of the funds attributable to the sewer operation (\$804,513). How these funds are utilized in meeting general City claims are a policy matter and not a legal issue.

Thus, in our view the City Manager may, in his administrative discretion, provide for expenditure of these funds to meet general City claims (or water claims) or provide for their use solely to meet sewer claims.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:dv(x043.2)

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