

MEMORANDUM OF LAW

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DATE: November 30, 1989

TO: Ed Ryan, City Auditor & Comptroller

FROM: City Attorney

SUBJECT: "Utility Funds" in the Public Liability Reserve

By a Memorandum of Law dated November 2, 1989 we addressed certain questions you had posed regarding the use of "Utilities Department monies."

One of your questions related to the use of revenues derived from funds attributable to the sewer operation (\$804,513.00). In our analysis we indicated that there were no legal impediments with respect to use of those funds. That observation was in error. Section 64.0403 of the San Diego Municipal Code provides:

(a) There is hereby created a "Sewer Revenue Fund." All revenues derived from the operation of the wastewater system shall be paid into the Sewer Revenue Fund.

(b) All revenues shall be used for the following purposes only:

1. Paying the cost of maintenance and operation of the City's wastewater system.

2. Paying all or any part of the cost and expense of extending, constructing, reconstructing, or improving the City's waste-water system or any part thereof.

3. Any purpose authorized by Section 90.2 of the City Charter.

Thus, those funds must be used in accordance with that mandate and may be expended solely for the purpose of paying

claims arising from the City's wastewater system. To the extent Memorandum of Law 89-105, dated November 2, 1989, indicates to the contrary, that advice should not be followed.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:wk(x043.2)

ML-89-112