

MEMORANDUM OF LAW

DATE: June 19, 1989

TO: Councilmember Ed Struiksma
FROM: City Attorney
SUBJECT: San Diego Association of Governments Voting
Formula

On May 26, 1989, you asked that a Memorandum of Law dated April 25, 1975, by C.M. Fitzpatrick, Senior Chief Deputy, concerning the Comprehensive Planning Organization Voting Formula be updated in light of NYC Board of Estimate v. Morris, 489 U.S. , 103 L.Ed.2d 717, 109 S.Ct. 1433 (1989). In his Memorandum of Law, then Senior Chief Deputy, C.M. Fitzpatrick reviewed the City of San Diego's legal right to require a voice on the Comprehensive Planning Organization in proportion to the City of San Diego's population, utilizing the principal of "one man, one vote." He stated that "there appears to be no constitutional mandate that The City of San Diego have a voice or vote in the Comprehensive Planning Organization equal to its population with respect to the remainder of the County." He based this conclusion on the California Supreme Court's opinion in People Ex Rel. Younger v. County of El Dorado, 5 Cal. 3d 480 (1971) which held that the "one man, one vote" principal is immaterial when the members of a governmental body are appointed and not elected by popular vote.

The Comprehensive Planning Organization has subsequently been renamed the San Diego Association of Governments (SANDAG), however, its governing body still consists of a board of directors composed of one representative selected by the governing body of each member agency. Each director must be a Mayor, Councilmember or Supervisor of the governing body which selects him or her. According to Section 8 of the Joint Powers Agreement, each director has one vote except that if three directors request a weighted vote after voting on any particular item then in that event a weighted vote based on a population formula shall be taken. The weighted vote is the final and binding vote.

The Supreme Court's decision in NYC Board of Estimate v. Morris, reinforces Mr. Fitzpatrick's analysis of fourteen years ago. The Court held that the NYC Board of Estimate's structure was inconsistent with the equal protection clause of the Fourteenth Amendment because all eight of the New York City officials on the board become members of the board as a matter of

law upon their various elections by the voters. The members are the Mayor, the Comptroller, the President of the City Council, all of whom are elected citywide, and the five respective borough presidents who are elected by the residents of their specific boroughs. In other words if a state or a local government decides to select persons by popular election to perform any governmental function each qualified voter must be given an equal opportunity to participate in that election.

The governing board of SANDAG is not elected, it is appointed. Therefore, the rule of "one man, one vote" is still immaterial for those reasons clearly expressed by Mr. Fitzpatrick in his April 25, 1975 Memorandum of Law. For the same reason the weighted vote procedure utilized by SANDAG is also not affected by the court's decision in NYC Board of Estimate v. Morris.

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By

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