

MEMORANDUM OF LAW

DATE: March 2, 1990

TO: Ed Ryan, City Auditor and Comptroller
FROM: C. M. Fitzpatrick, Assistant City Attorney
SUBJECT: San Diego City Charter Sections 80 and 99;
Applicability As They May Relate to
Contemplated Major Construction Projects.
Follow-up Questions Concerning;

BACKGROUND

On January 9, 1990, we provided you with a Memorandum of Law which, among other things, indicated our views concerning the applicability of Charter Sections 80 and 99 as they might relate to the proposed financing of construction of a new civic center by use of certificates of participation ("COPs").

Our comments have provided you with our opinion that it is not necessary to assure that moneys applicable to the payment of a contract obligation be present in the City treasury when a contract is authorized so long as you are certain that, before maturity of any obligation under the contract, moneys anticipated to come into the treasury to the credit of an applicable appropriation are indeed there.

In discussing this analysis with you, further questions have arisen. First, you ask whether moneys from some other City fund may be temporarily advanced to meet cash flow requirements and, if so, by what mechanism may those advances be authorized?

With respect to this issue we believe you may indeed advance moneys from some other available City fund to meet cash flow requirements so long as the appropriations ordinance(s) has authorized the advance. As you pointed out, Section 82 of the Charter requires you to examine all bills payable and not issue any payment unless you find, among other things, that an appropriation has been made for payment, which has not been exhausted, and that there is money in the treasury to make the

payment. Thus, it seems to us that if the appropriation ordinance provides for the temporary advance of moneys from some fund from which moneys are available in order to meet cash-flow requirements (subject of course to immediate repayment to the fund from which the moneys have been expended when any issue of COPs is sold), then you have met the requirements of Charter Section 82.

Secondly, you ask when such an advance must be refunded. In order to avoid any possibility of a violation of Charter Section

99 or the state constitutional prohibitions against long-term indebtedness we think that no inter-fund advance should exceed the term of the fiscal year in which it is made.

I trust these answers are responsive to your questions.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

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