

MEMORANDUM OF LAW

DATE: January 18, 1990

TO: Ralph Shackelford, Purchasing Agent
FROM: City Attorney
SUBJECT: Proposition A - Prevailing Wages Requirement

I
INQUIRY

You recently requested an opinion as to whether prevailing wages are required to be paid on City projects utilizing Proposition A funds. In order to properly answer your question, we must consider the background of the subject.

II
BACKGROUND OF MUNICIPAL AFFAIRS DOCTRINE
The California Constitution, in its "home rule" provisions allows cities to regulate municipal affairs. Article XI, section 5, provides in pertinent part:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.

The City of San Diego has availed itself of this offer by adopting section 2 of the City Charter which states, in pertinent part:

The City of San Diego, in addition to any of the powers now held by or that may hereafter be granted to it under the Constitution or Laws of this State, shall have the right and power and make and enforce all laws and

regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter.

However, the phrase "municipal affair" is not of certain definition. Justice McFarland in *In re Braun*, 141 Cal. 204, 214 (1903) referred to the words as "loose, indefinable, wild words," quoted in *Weekes v. City of Oakland*, 21 Cal. 3d 386, 423 (1978). The California Supreme Court in a well-known case in this area stated:

Because the various sections of article XI

fail to define municipal affairs, it becomes necessary for the courts to decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern. In other words, 'No exact definition of the term municipal affairs can be formulated, and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case.' Bishop v. City of San Jose, 1 Cal. 3d 56, 62 (1969).

Though municipalities have control over municipal affairs "there are innumerable authorities holding that general law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern." Professional Fire Fighters v. City of Los Angeles, 60 Cal. 2d 276, 292 (1963). "Local legislation of a charter city prevails over general law only when the subject matter is 'exclusively,' 'solely,' or 'strictly' a municipal affair." Weekes v. City of Oakland, 21 Cal. 3d 386, 423 (1978).

III

PREVAILING WAGES IN THE CITY OF SAN DIEGO

In order to ensure that public works projects were constructed and maintained by adequately compensated workers, the State of California has consistently required that prevailing wages be paid to all workers employed on public works. The general law regarding prevailing wages is contained in California Labor Code section 1771, which states:

Except for public works projects of one thousand dollars (\$1,000) or less, not less

than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance

work.

Originally the City adopted wage determinations utilizing input collected from the San Diego County Labor Council, the Building Trades Council, the Associated General Contractors Association and the Building Contractors Association. Subsequently, the State Director of Industrial Relations determined and published the prevailing wage in each local area in the State, and that determination was required in all public works specifications and contracts. On June 22, 1977, the San Diego City Council adopted Resolution No. 218685, which specified that prevailing wage schedules would be included in all City contracts until such time that the resolution should be superseded by a later resolution of the Council.

In 1980, a City Manager's Report, No. 80-191, addressed the issue of prevailing wages. Since the State Director of Industrial Relations had begun determining wage requirements for each local area, the report stated "under these circumstances, it appears in the City's best interest to abandon our 'Prevailing' Wage Determination as there is no way of determining the actual prevailing wage, only the published union wage rates are available. Non-union contractors often pay scale or above when workers achieve high productivity. Others obviously pay less." In addition, that report stated that the fiscal impact of taking such action would be "undetermined savings due to lower construction costs and less restrictive specifications." Consequently, that resolution was rescinded in April 1980, by Resolution No. 251555, which declared that prevailing wages would be paid only when required by federal or state grants and on other projects considered to be of state concern.

The City successfully defended a challenge by the California State Department of Industrial Relations to that resolution in

Vial v. City of San Diego, 122 Cal. App. 3d 346, 348 (1981), hearing denied September 1981. The court said:

A chartered city's ordinances which deal with purely municipal affairs are valid even if they conflict with general laws. On the other hand, general laws on subjects of statewide concern supersede any conflicting enactments of chartered cities . . . (Citation omitted.) The prevailing wage law, a general law, does not apply to the public works projects of a chartered city, as long as the projects in question are within the realm of 'municipal affairs.' The expenditure of a city's funds on such projects and the rates of pay of the

workers whom it hires to carry them out are municipal affairs. (Citation omitted.) Here the rescinding resolution specifically excludes state and federally funded projects and those 'considered to be of state concern;' application of the resolution is limited to projects within the sphere of 'municipal affairs' . . . the resolution is valid despite its conflict with the general prevailing wage law.

IV PROPOSITION A

In 1985, Senate Bill 361 was passed which imposed a state-mandated local program that required San Diego County to conduct an election on the transactions and use tax. Public Utility Code sections 13200 et seq. were added in 1985 creating the San Diego County Regional Transportation Commission and defining its duties. Included were legislative findings (section 13200):

The Legislature hereby finds and declares all of the following:

(a) Recognizing the scarcity of resources available for all transportation development, alternative methods of financing provided in this chapter are needed to finance the cost of maintaining, acquiring, constructing, and developing facilities for transportation systems in the County of San Diego and these methods will increase economic

opportunities, contribute to economic development, be in the public interest and serve a public purpose, and promote the health, safety, and welfare of the citizens within the County of San Diego.

(b) It is in the public interest to allow the voters of San Diego County to create the San Diego County Regional Transportation Commission so that local decisions can be implemented in a timely manner to provide improvements to the transportation system.

(Emphasis added.)

Section 132051 provides that "the Board of Directors of San Diego Association of Governments (SANDAG) shall serve as the San Diego County Regional Transportation Commission." Section 132301 states that "a retail transactions and use tax ordinance

applicable in the incorporated and unincorporated territory of the county shall be imposed by the commission." (Emphasis added.) The different sections proceed to define the nature of the tax to be imposed, as well as the uses of the tax revenues: "construction, capital acquisition, maintenance, and operation of streets, roads, and highways, including state highways . . . and public mass transit systems." Section 132302. Section 132303 states that the "County shall conduct an election pursuant to section 132301." (Emphasis added.)

Therefore, Proposition A went before the voters on November 3, 1987 and was passed:

A SAN DIEGO TRANSPORTATION IMPROVEMENT PROGRAM.

To help relieve traffic congestion, increase safety, and improve air quality by providing essential countywide transportation improvements, including:

Reduced traffic congestion by widening or building Highways 52, 78, 76, 56, 54 and 125;

Reduced price transit passes for seniors, students, and the disabled;

Expanded commuter transit services including trolley system extensions to north University City, San Diego Jack Murphy Stadium, San Diego State University, and

Santee, commuter rail service to North County, trolley service improvements in South Bay and East County, and express and local bus improvements;

Increased safety through repair and improvement of local streets and roads; and

Construction of new bicycle routes.

Shall the San Diego County Regional Transportation Commission be authorized to establish by ordinance a one-half of one percent transactions and use tax for a period not to exceed twenty years, with the proceeds placed in a special fund solely for transportation improvements?"

The Ordinance and Expenditure Phase of Proposition A provides that after deduction of administrative expenses and the allocation of \$1 million annually for bicycle facilities, the revenues would be allocated one-third for transit purposes, one-third for local street and road purposes and one-third for highway purposes. (Section 4(a).) The funds available to local agencies for local street and road purposes were to be

distributed according to a formula based two-thirds on population and one-third on maintained street and road mileage. Funds are required to be expended to repair and rehabilitate existing roadways, to reduce congestion and improve safety and to provide for construction of needed facilities. (Section 4(c).)

In order to obtain funding, each local agency is required to develop a list of projects to be reviewed by the Commission (section 5), and the Commission shall approve a five-year project list (section 6). Section 8 provides that a local agency maintain a level of expenditures on the same level of FY 84-85, and any agency which does not meet its maintenance of effort (MOE) shall have its funding reduced in the following year.

California Public Utilities Code section 132304(b) (part of article 5 requiring the election and ordinance for the tax) states that "prior to the operative date of the ordinance, the Commission shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance."

The California Revenue and Tax Code specifically mentions the San Diego Regional Transportation Commission in section 7252.7,

part of the chapter on Transactions and Use Taxes, as a "district" to be included in the provisions for imposition of taxes.

It is quite apparent that Proposition A funds are not monies collected and spent solely in the City of San Diego. The state legislature has provided for the development of the San Diego County Regional Transportation Commission; has appointed the Commission to hold the election imposing the tax, to impose a retail transactions and use tax ordinance, to review proposals and allocate revenues received, to contract with the State Board of Equalization for services, and to withhold funds from agencies which do not comply with the requirements of the ordinance. In addition, the legislative findings declared the Committee formation and resultant financing provided, to be in the public interest and serve a public purpose. Clearly, the use of Proposition A funds is not solely a municipal affair.

V

RELEVANT CASE LAW

There have been numerous cases that have dealt with the subject of municipal affairs, some specifically with projects that were partly municipal affairs. In *City of Pasadena v. Chamberlain*, 204 Cal. 653, 658-659 (1928), the California Supreme Court addressed the Metropolitan Water District Act and held that "the act purports to be a general law applicable to all portions of the State of California embracing municipalities

which might desire to unite in a larger organization with the object of accomplishing a common purpose which it might not be possible or practical for such municipalities, acting singly or separately, to accomplish." The court proceeded to hold that the act in question was a general law in spite of the fact "that it confers powers and benefits upon those who reside within the corporate limits of municipalities." *Id.*, Cf., *City of Pasadena v. Charleville*, 215 Cal. 384 (1932) where a contract for construction of a fence around a reservoir which was part of a city's municipal water system was a municipal affair.

Closer to the present inquiry, *Wilson v. City of San Bernardino*, 186 Cal. App. 2d 603, 610 (1960), dealt with formation of a water district. The court stated that "courts at a very early date began to make a distinction between 'municipal affairs' carried on by a city and similar affairs delegated to a larger area which included a city." Further, "it would therefore clearly appear that when a general law of the state, adopted by the state legislature, provides for a scheme of public improvement, the scope of which intrudes upon or transcends the

boundary of one or several municipalities, together with unincorporated territory, such contemplated improvement ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state." *Id.* at 611, quoted with approval in *Committee of Seven Thousand v. Superior Court*, 45 Cal. 3d 491, 506 (1988).

In *City of Santa Clara v. Von Raesfeld*, 3 Cal. 3d 239, 246 (1970), concerning a sewer project, the court said "as in the case of other municipal projects, sewer projects may transcend the boundaries of one or several municipalities . . . in such circumstances, the project 'ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state.'"

VI CONCLUSION

Extensive language and history regarding Proposition A has been utilized to illustrate the amount of state involvement in the entire Proposition A arena. The Commission was set up by state legislation in the Public Utilities Code, the tax was mandated by state legislature and the state legislature set up requirements for the Commission. In turn, the Commission through the Board of Directors of SANDAG is charged with administering and regulating Proposition A programs, approving proposed projects and allocating funds to agencies included within the area served.

Relevant case law points out that where projects affecting a

municipality transcend that municipality's boundaries to include other areas, both incorporated and unincorporated, a matter ceases to be a purely municipal affair and becomes one that instead is governed by general law.

In conclusion it is the opinion of this office regarding projects utilizing Proposition A funds that general law prevails. That is, the City of San Diego must pay prevailing wages on those projects in compliance with California Labor Code 1770 et seq.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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