

DATE: November 9, 1990

TO: George J. Penn, Assistant to the City
Manager/Executive Director, Citizens' Review
Board on Police Practices

FROM: City Attorney

SUBJECT: Review Board's Recommendation to the City
Manager Regarding an Amendment to the Rules and
Regulations Concerning Review of All Police
Shootings that Result in Death or Injury

On July 10, 1990, the Citizens' Review Board on Police Practices (CRBPP) recommended to the City Manager that its rules and regulations be expanded to include the review of all police shootings that result in death or injury, whether or not a citizen's complaint had been filed in connection with such shooting. At that time this office orally advised the board that the City Manager could not expand the board's authority beyond that provided for in Charter section 43(d). This memorandum of law confirms that advice. However, the Chief of Police may and has authorized such a procedure. Charter section 43(d) states in part:

(d) CITIZENS' REVIEW BOARD ON POLICE
PRACTICES

Notwithstanding any other provision of this Charter, the City Manager shall have the exclusive authority to create and establish a citizens' review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The City Manager shall establish such rules and regulations as may be necessary for this board to carry

out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers
. . . . (Emphasis added.)

It is clear from the language of Charter section 43(d) that the jurisdiction of the CRBPP extends to only those matters which have arisen as a result of a citizen's complaint. The City

Manager cannot expand the board's jurisdiction under the Charter by a change in the rules and regulations. *Kenney v. Wolff*, 102 Cal. App. 2d 132 (1951).

The investigations of shootings by San Diego Police Department officers that result in the death or injury of a citizen are clearly a matter over which the Chief of Police has authority under Charter section 57. That section states that the Chief of Police shall have all power and authority necessary for the operation and control of the Police Department.

Subsequent to the July 10, 1990, meeting, the Chief of Police indicated that he believed that it was in the best interest of the San Diego Police Department for it to have the advice of the CRBPP on shootings that result in death or injury whether or not a citizen's complaint had been filed. The Chief of Police has therefore authorized the review of these matters by the CRBPP.

Under these specific circumstances, we find no legal reason why the rules and regulations of the CRBPP cannot be amended to reflect the decision of the Chief of Police, and to indicate that these matters will be reviewed by the CRBPP after all internal and external investigations have been completed and reviewed by the Police Department and the District Attorney.

JOHN W. WITT, City Attorney

By

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