MEMORANDUM OF LAW

DATE: January 10, 1991

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: Proposed San Diego State University Foundation Redevelopment Project

This memorandum of law is being written to address two questions you raised in your October 12, 1990 memorandum regarding the proposed San Diego State University ("SDSU") redevelopment project. Specifically, you asked:

1. Can the California State University System (the "System"), an entity of the State of California, make application to The City of San Diego (the "City") for the formation of a redevelopment project under California Community Redevelopment Law (Health and Safety Code section 33000)?

2. If the answer to the preceding question is in the affirmative, would this redevelopment project be exempt from City land use controls and fees under the doctrine of sovereign immunity?

Background

Health and Safety Code section 33311 states that "any person, group, association or corporation may in writing, request the legislative body . . . to designate a survey area . . . ." On August 26, 1988, the San Diego State Foundation (the "Foundation") requested in writing to the City that a redevelopment survey area be designated in the area around SDSU. The Foundation is a nonprofit corporation organized to "promote and assist the educational servies sic of the San Diego State University." (See the Articles of Incorporation, attached hereto as Exhibit A.)

The survey area was designated by the City on November 15, 1988.

Since that time, the Foundation has informed City staff that the System would be the entity applying to the City for the formation of a redevelopment project. The Foundation would be acting for all intents and purposes in an agent capacity on behalf of the System.

Analysis

As indicated above, California Redevelopment Law allows for entities other than the City or local redevelopment agency to request the designation of a survey area to determine if blighted conditions exist to such a degree that the formation of a

redevelopment project is warranted. While not specifically addressed, there is nothing in the Redevelopment Law that would seem to preclude another governmental entity from requesting the designation of a survey area or from making a final application to the City for the actual adoption of the redevelopment project, assuming all criteria are met for such adoption and there is a finding of blight as defined in the law (see Health and Safety Code sections 33030 through 33039). Our review of the statutes (law) regarding the System likewise appears to contain no prohibition against such a request, but we also find no specific authority. For purposes of this memorandum, we assume that the System's statutory scheme would allow such a request to be made.

The second question provides a far more complex set of issues. The doctrine of sovereign immunity is succinctly summed up in Board of Trustees v. City of Los Angeles, 49 Cal. App. 3d 45, 51 (1975):

A chartered city or county may not legislate in regard to matters covered by general law if (a) the local legislation attempts to impose additional requirements, or (b) the subject matter is one of state concern, and the general law occupies the field or (c) the subject matter is of such statewide concern that it can no longer be deemed a municipal affair (citations omitted).

Further clarification on the matter was given in 68 Op. Atty. Gen. 114 (1985). The question was whether private development on State lands would be subject to local building and zoning requirements. The Attorney General held that it would depend "upon the purpose of the private development." Id. at 115. If the use of the property furthered a State purpose (other than solely raising revenue), it would be exempt. "If the private development was solely for the private purpose of the developer, local building and zoning ordinances would apply." Id. at 122.

In the situation facing the City now, a determination would have to be made as to whether the development contemplated in the proposed redevelopment furthered a State or governmental purpose. If it did, such development would not be required to follow local land use controls.

The creation of a statewide network of universities would certainly indicate that the legislature believed that the provision of accessible postsecondary education to be a matter of statewide concern. Accordingly, any development that furthered that purpose would be considered governmental in nature, and the doctrine of sovereign immunity would apply.

Thus, the provision of housing, parking facilities, research facilities, street improvements and the like would clearly be

governmental in nature. The more difficult question arises when a project may not clearly be deemed governmental but possibly be proprietary in nature. While there are not always clear distinctions between the two, the following is offered as guidelines:

Proprietary Characteristics:

1. The operation of an industrial or business enterprise may constitute a proprietary activity. Pianka v. State of California, 46 Cal. 2d 208, 210 (1956). This would hold especially true if the enterprise's sole purpose is to raise revenue. If it held a dual purpose (such as a governmental purpose in job training and a propriety purpose to raise revenue), a determination would have to be made as to the primary purpose and unless it was weighted heavily toward a proprietary purpose, it would probably be deemed governmental in nature.
2. Activities designed to amuse and entertain the public may be held to be proprietary activities. Pianka, at 210.
3. If the activity engaged in by the governmental entity is one "usually undertaken by private individuals or corporation and not by government," it supports a conclusion that the activity constitutes a commercial or business enterprise and is not in the exercise of a government function. People v. Superior Court, 29 Cal. 2d 754, 763 (1947).
4. If an activity is "revenue producing" and has no relation to the governmental function of the government entity," it is proprietary. Board of Trustees v. City of Los Angeles, 49 Cal. App. 3d 45, 46 (1975).

Governmental Characteristics:

1. If the activity is a "public use, one which is for the benefit of the general public," it is considered a governmental activity. 68 Op. Atty. Gen. 114, 120 (1985).
2. "Any activity which furthers the purposes of the governmental entity" would be considered a governmental activity. Id. at 121.
3. When a governmental entity engages in "sovereign activities" (such as the construction, leasing and maintenance of its buildings), it is not subject to local regulations. Regents of University of California v. City of Santa Monica, 77 Cal. App. 3d 130, 136 (1978); City of Orange v. Valenti, 37 Cal. App. 3d 240, 241, 243 (1974).

In light of the above, it is suggested that should a redevelopment project for the area be adopted, that at a minimum, each phase of development be examined to determine if the nature of projects are governmental and findings be made by the legislative body to that effect. Obviously, this will not always

be clear cut, but the guidelines suggested above could be expanded to take into account the type of development that would be proposed by the redevelopment plan.

If you have any further questions or wish to discuss this further, please contact me.

JOHN W. WITT, City Attorney
By
Allisyn L. Thomas
Deputy City Attorney

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Attachment
ML-91-05