

MEMORANDUM OF LAW

DATE: February 4, 1991

TO: Charles G. Abdelnour, City Clerk  
FROM: City Attorney  
SUBJECT: Penasquitos Gardens/Mt. Aguilar Apartments -  
Housing Authority and City Council Actions  
Authorizing Issuance of Bonds for Acquisition

On January 29, 1991, the City Council adopted a resolution authorizing the issuance of multifamily housing revenue bonds by the Housing Authority for the purpose of acquiring the Penasquitos Gardens and Mt. Aguilar apartment projects. Concurrently the City Council, sitting as the Housing Authority, also adopted a resolution authorizing the issuance of the bonds. You have asked whether the action of the City Council or the Housing Authority is subject to referendum.

As a general rule, a referendum or initiative is only available with respect to matters which are legislative in character, as opposed to executive or administrative in character. *Kleiber v. San Francisco*, 18 Cal.2d 718, 117 P.2d 657 (1941). The historical test of whether an action is legislative or administrative has usually been resolved by determining whether the action was one creating a new law or whether the action was merely an act pursuant to an already existing law.

The primary action in the instant fact situation is the decision of the Housing Authority authorizing the issuance of Housing Authority bonds. The Housing Authority is not, in fact, a legislative body. The Housing Authority is an agency of the state rather than an agency of the City Housing Authority of *City of Needles v. City Council of City of Needles*, 25 Cal.Rptr. 493, 208 Cal.App.2d 599 (1962); *People v. Holtzendorff*, 2 Cal.Rptr. 676, 177 Cal.App.2d 788 (1960); 21 Ops.Atty.Gen. 40, and is subject to and controlled by the Housing Authorities Law which is set forth in Section 34200 et seq. of the California Health and Safety Code. The Housing Authorities Law does not authorize individual housing authorities to "legislate" but merely allows such authorities to take executive or

administrative actions in accordance with the state law.  
*Kleiber*, supra.

Since the Housing Authority is a state, rather than a municipal agency, actions of the Housing Authority are not subject to any restrictions contained in the City Charter or the general provisions of the City's Municipal Code.

There is nothing in the Housing Authorities Law which specifies that the authorization of the issuance of bonds by a housing authority is an action which is subject to referendum. The provisions for the sale of housing bonds are contained in Section 34350 et seq. of the Health and Safety Code. A general statement is, however, contained in Section 5300 of the California Elections Code which applies to bond issuance by any political subdivision of the state and specifies that referendum is available with regard to the issuance of bonds "the security for which constitutes a lien on the property within the jurisdiction and the proposal for which is required to be submitted to the voters for approval." The bonds in question are, of course, not such general obligation bonds and would, therefore, not fall within the provisions of Section 5300.

A review of various cases and statutes relating to the people's power of referendum indicates that this important right is directly related to the concept that the people as a whole should have the right to review and approve or disapprove legislative actions, which actions may either establish or disestablish controls of private activities or establish or disestablish taxes or other financial impositions.

While there is no reference in the Housing Authorities Law to any right of referendum regarding actions taken by a housing authority, a similar body of law contained in Section 33000 et seq. of the Health and Safety Code, which constitutes the Community Redevelopment Law, does provide in one instance for a right of referendum. The sole referendable action provided for in the redevelopment law involves the action of the joint meeting of the redevelopment agency and a city council where the city council, as the legislative body, acting for both entities, approves, by ordinance, a redevelopment plan. The redevelopment plan, of course, results in effect in a rezoning of all the property within a redevelopment project. Such action has substantial potential financial impacts on the affected property owners. Such a "rezoning" is easily recognized as a "legislative act."

There is no similar provision authorizing a referendum in the sections relating to the issuance of bonds by a redevelopment agency nor in the sections relating to the issuance of bonds by a housing authority.

In summary, it is our conclusion that the City's Housing Authority is not a legislative body but is merely an executive body carrying out its functions in accordance with legislation of the State of California. The action of the Housing Authority in issuing bonds does not qualify as a "legislative act" and the

state legislation authorizing the issuance of bonds does not provide for a referendum for such action.

With regard to the resolution of the City Council, the Council's action likewise is not legislative in character. The sole purpose of the Council resolution is to conform to a provision of the United States Internal Revenue Code which requires, in connection with proposed issuances of tax exempt bonds, that approval for such bonds be received from the governmental unit having jurisdiction over the area in which projects can be acquired with bond proceeds and, under Municipal Code section 27.2601 (which allows referendum solely for legislative acts of the Council), is purely administrative and thus not subject to referendum.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug  
Deputy City Attorney

HOV:ps:559(x043.2)

ML-91-14