MEMORANDUM OF LAW

DATE: February 28, 1991

TO: Daro Quiring, Management Assistant
        City Manager's Office

FROM: City Attorney

SUBJECT: Downtown Business Improvement District

   Your memorandum to John Witt, dated February 11, 1991, has been referred to me for response. In that memo you reference a letter sent to you from Ron Oliver of the Central City Association ("CCA") regarding the Downtown Business Improvement District ("BID") and CCA's plans for expansion of the BID. As you correctly note, several issues arise. Each of your concerns will be addressed separately.

   1. May funds collected from a BID be used to pay for a business/recruitment service and a private security service?

   From Mr. Oliver's letter, it appears that CCA is concerned with the actual or possible vacancy rate in downtown buildings. Accordingly, they wish to develop "an aggressive retention and recruitment plan for businesses to fill the buildings in downtown San Diego." They also would like to hire a private security service.

   California Streets and Highways Code section 36500 et seq. (officially termed the Parking and Business Improvement Law of 1989) governs BIDs. Section 36501 states in pertinent part:

> (b) The Legislature also finds and declares that it is in the public interest to promote economic revitalization and physical maintenance of the business districts of its cities in order to . . . attract new businesses and prevent erosion of the business districts.
>
> (c) The Legislature also finds that it is of particular local benefit to allow cities to fund property related improvements and activities through the levy of assessments upon the businesses which benefit from those improvements and activities.
> (Emphasis added.)

   From the above you can see that the hiring of a private

security service would clearly fall within the types of activities contemplated by this code section. Given crime and the transient population downtown, such a service would assist in physical maintenance of downtown businesses and is clearly "property related."

The retention and recruitment plan to fill downtown buildings is not as clear cut. For BID funds to be spent, some factual finding should be established showing how the plan's activities are property related and how they will be of benefit to the businesses paying the assessments.

2. Can private property owners be assessed for the services provided by a BID?

Only business may be assessed for BID activities. Section 36501(d) holds:

> The Legislators . . . declares that
> assessments levied for the purpose
> of providing improvements and
> promoting activities which benefit
> individual businesses may also
> benefit the property within the area
> directly or indirectly and that
> those assessments are not taxes for
> the general benefit of a city, but
> are assessments which confer special
> benefits upon the businesses for
> which the improvements and
> activities are provided. (Emphasis
> added.)

Section 36502 specifically states that assessments are to be levied on "businesses within a parking and business improvement area."

Thus, private property owners may not be assessed unless they are also business owners on the same piece of property.

3. Are there other available legal mechanisms to achieve CCA's objectives?

While it appears that the activities mentioned by Mr. Oliver could most likely be accomplished through a BID, there is a legal problem with broadening the group on which the assessments may be levied. Unfortunately, the types of activities contemplated could not be funded by other types of assessment districts such as those organized pursuant to the Improvement Act of 1911. Obviously, the business and property owners could form their own private association and charge for membership or assess themselves for services and activities. However, the City would not collect or handle the assessments as is allowed with BIDs.

If you have any other questions or wish to discuss the matter further, please contact me.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas
Deputy City Attorney

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