

MEMORANDUM OF LAW

DATE: January 9, 1991

TO: Conny Jamison, City Treasurer

FROM: City Attorney

SUBJECT: Rental Unit Tax

This responds to your memorandum regarding the City's authority to place a lien upon property for payment of rental property business taxes under the provisions of San Diego Municipal Code section 31.0305.

I spoke with Mr. Peter Redmann of the County Auditor's office who had first raised these concerns with you regarding the lien procedure. Mr. Redmann indicated that the tax bill prepared by the County Assessor is running out of space upon which to place special assessments and taxes. Consequently, his principal interest is to limit the number of items billed from a space conservation perspective. However, it is appropriate to outline the pertinent legal considerations for future reference.

As a charter city, San Diego has plenary power to legislate concerning matters of municipal affairs. This clearly includes the power to impose, collect and administer taxes. California Constitution article 11, section 5: *Ainsworth v. Bryant*, 34 Cal.2d 465, 469 (1949); *Rivera v. City of Fresno*, 6 Cal.3d 132 (1971); *Bishop v. City of San Jose*, 1 Cal.3d 56 (1969). Government Code sections 43000 and 43001 provide, respectively, that a city may provide by ordinance for the assessment, levy and collection of city taxes, and that such taxes, penalties and costs of collection are liens upon the property so assessed.

Under Civil Code sections 2872 and 2881, liens, which are defined as a charge imposed upon specified property, are created by operation of law. Under Revenue and Taxation Code section 2187, every tax on real property is a lien against the property so assessed. Consequently, the duties and functions relating to collection, payment and enforcement of those taxes and the corresponding liens may be delegated to a county by a city under the provisions of Government Code section 51542.

We conclude that there is ample authority for the City of San Diego to impose the rental business tax, to designate it as a lien upon specified real property (in this case the property that gives rise to the generation of revenue upon which the business tax is predicated), and finally, for the collection and administration of the tax by the County on the City's behalf.

If you should have any further questions on the subject,

please do not hesitate to contact the undersigned.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:ps:160(x043.2)

cc Maureen Stapleton

Jack Sturak

Mary Kay Jackson

ML-91-4