

MEMORANDUM OF LAW

DATE: March 18, 1992

TO: Deputy Mayor Ron Roberts

FROM: City Attorney

SUBJECT: Ability of The City of San Diego to Establish a Municipal Court and Levy Bail Tax

I

Introduction

You and the San Diego Police Department on behalf of your office recently asked (1) whether the City of San Diego could establish its own municipal court; and (2) whether the City could levy a bail tax. (See Attachments One and Two.) The City lacks the authority to accomplish either goal.

II

The City Lacks the Authority to Establish a Municipal Court
California Constitution, article VI, section 5 provides that:

(a) Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.

There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.

The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.

(b) Notwithstanding the provisions of subdivision (a), any city in San Diego County may be divided into more than one municipal court or justice court district if the Legislature determines that unusual geographic conditions warrant such division. (Emphasis added.)

Plainly, this constitutional provision has preempted cities from establishing courts. In *Salvich v. Walsh*, 82 Cal. App. 2d 228, 233, (1947) the court interpreted former California Constitution article IV, section 11, which had similar language, and explained that "except for the sole question as to whether a municipal court shall exist in the municipality, the complete control over municipal courts is placed by the Constitution in the Legislature and not in the city or city and county." See also, *Wilson v. Walters*, 19 Cal. 2d 111, 119 (1941). Therefore, the City may not establish a municipal court.

The City is also powerless to establish a police court because the

Municipal and Justice Court Act of 1949 abolished police courts as well as all other courts inferior to the justice courts and municipal courts. Deering's General Laws, Act 1880 (repealed by Stats. 1953, ch. 206, Section 7). This legislation was thereafter validated and effectuated by constitutional amendment in 1950 by former California Constitution article IV, section 11. Each county was divided into judicial districts and each was given a justice court or municipal court. All other courts were abolished. Administration of the municipal and justice courts is now accomplished through Government Code sections 71001 et seq. Finally, California Constitution article VI, section 5(b), which allows any city in San Diego to be divided into more than one judicial district, does not change this result. Subdivision (b) apparently was enacted for the sole purpose of permitting the San Ysidro/Otay Mesa area to become part of the South Bay Municipal Court District rather than the San Diego Municipal Court District. See Government Code section 71040.6. Thus, nothing in the subdivision (b) would permit the city to open and operate its own municipal court. For these reasons, the City of San Diego lacks the authority to establish its own municipal court.

III

The City Lacks the Authority to Levy a Bail Tax

It has long been held that bail is not an appropriate avenue for government revenue. "The object of bail is to insure the attendance of the principal and his obedience to the orders and judgment of the court. There should be no suggestion of revenue to the state or county, nor punishment to the surety." *People v. Calvert*, 129 Cal. App. 2d 693, 698 (1954) (cited with approval by *People v. Wilcox*, 53 Cal. 2d 651, 657 (1960) and *People v. North Beach Bonding Co.*, 36 Cal. App. 3d 663, 675 (1974)). As another court put it, "the object of requiring bail is not pecuniary compensation to the government, but to compel the presence of the accused in court to the end that justice may be administered." *County of Los Angeles v. Maga*, 97 Cal. App. 688, 692 (1929). Accordingly, bail may not properly be taxed because there can be no "suggestion of revenue" to the City. Moreover, the state has preempted this area of law in Penal Code sections 1268-1320. These reasons alone preclude the City from levying bail tax. Therefore, it is unnecessary to address other possible reasons for preclusion.

IV

Conclusion

For the reasons discussed above, the City lacks the authority to establish a municipal court and may not levy a bail tax.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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Attachments

cc Ken Fortier, Ass't Chief, SDPD

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