

MEMORANDUM OF LAW

DATE: September 18, 1992

TO: Maureen Stapleton, Assistant City Manager

FROM: City Attorney

SUBJECT: Proposed Charges to Sewer Utility Fund

You recently asked for a priority review of two (2) proposals to permit contributions to the General Fund from the Sewer Utility Fund. The proposals involve whether any portion of an anticipated insurance reimbursement from the Point Loma outfall could be used by the General Fund or whether salary payments for managerial time spent working towards the repair of the rupture could be paid from the Sewer Utility Fund. In light of your pressing budget review, you asked for an expeditious reply, which we oblige as follows.

1. Potential Insurance Reimbursement

While we are mindful of the time restrictions, we have repeatedly stressed that the water and sewer utility is a self-sustaining and financially independent entity and that, by reason of the series of bonds it has issued, is restricted by the various bond covenants contained in such bonds. One such covenant deals expressly with insurance proceeds:

Section 13

Covenant 6. Insurance. The City covenants that it shall at all times maintain with responsible insurers all such insurance on the sewer system as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such sewer system. If any useful part of the sewer system shall be damaged or destroyed, such part shall be restored to use. The money collected from insurance against accident to, loss of or damage to the sewer system shall be used for repairing or rebuilding said sewer system, and to the extent not so applied shall be transferred to the Bond Service Fund or

Re-demption Fund and shall be used to pay or call and redeem outstanding bonds issued hereunder.  
1966 Sewer Revenue Bonds, Series B emphasis added

Hence the potential proceeds are specifically restricted by the bond covenant and must perforce be credited to the Sewer Revenue Fund and cannot be allocated in any amount to the General Fund. We are quick to caution, of course, that such proceeds remain uncertain although this office is diligently pursuing same. See attached letter of September 4, 1992 from Deputy City Attorney Leslie Girard.

## 2. Managerial Salary Payments

Since the sewer utility is operated as an independent entity, Section 64.0403 of the San Diego Municipal Code limits its revenue expenditures to three (3) categories.

### Section 64.0403 Sewer Revenue Fund

Established

- (a) There is hereby created a "Sewer Revenue Fund." All revenues derived from the operation of the wastewater system shall be paid into the Sewer Revenue Fund.
- (b) All revenues shall be used for the following purposes only:
  1. Paying the cost of maintenance and operation of the City's wastewater system.
  2. Paying all or any part of the cost and expense of extending, constructing, reconstructing, or improving the City's wastewater system or any part thereof.
  3. Any purpose authorized by Section 90.2 of the City Charter.

emphasis added

To the extent that managerial salary charges were used in assisting to repair the ruptured outfall, they would be proper charges to the Sewer Revenue Fund under Section 64.0403(b)2. However, we are informed by the Services Division of the Water Utilities Department that the fund already is charged a general overhead rate of 12% for managerial efforts. To the extent that managerial efforts exceeded that charge in coordinating the rupture repair, such charges would be a proper expenditure of the Sewer Revenue Fund.

In assessing such charges, we are mindful that unclassified managerial employees are salaried employees whose wages and benefits are calculated on a monthly basis and are not eligible for overtime. Hence assessment of the charges against the Sewer Revenue Fund must be made on an estimated basis of time and effort that exceeds the general overhead charge of 12% and that

does not involve an assessment of overtime.

I trust this answers your inquiry in the time frame requested and with sufficient supporting authority.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:427(x043.2)

Attachment:1

cc H.R. Frauenfelder,

Deputy City Manager

Milon Mills, Jr.,

Water Utilities Director

Charles W. Yackly,

Deputy Water Utilities Director

Dennis T. Gibson,

Supervising Administrative Analyst,

Financial Management Department

ML-92-87

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