

MEMORANDUM OF LAW

DATE: November 23, 1993

TO: Councilmember Ron Roberts

FROM: City Attorney

SUBJECT: Actions Regarding Airport Planning and Elections

In your memorandum of October 19, 1993, you asked three questions regarding a proposal to place a measure on the County ballot which would designate the San Diego Association of Governments (SANDAG) as the authorized planning agency for a regional airport at NAS Miramar. We will respond to your questions in the order you submitted them.

1. Question: Can a County-wide vote legally bind the City?

Answer: In the context of your question, we do not believe that the County has the authority to abrogate the City of San Diego and the Airport Land Use Commission's (ALUC) roles in planning for an airport located within the City.

Analysis

The City of San Diego is a charter city and has broad authority in the area of municipal affairs. The decision to build or operate an airport is the City's, subject to review by regulatory agencies in accordance with statutory procedures. The County of San Diego is an arm of the State of California. The County of San Diego's jurisdiction over airport matters is limited to the authority granted to it by the State. The State of California has enacted comprehensive programs for coordinated airport planning. Public Utilities Code section 21660 et seq., and Government Code section 65080. The Code provisions place the local airport regulatory review process with the ALUC not the County. Public Utilities Code section 21670(a).

A binding referendum within the County of San Diego would require that that political jurisdiction adopt a specific ordinance or procedure. Any ordinance would affect only the legislative body propounding the referendum, and only to the limits of that body's authority.F

The Counsel for SANDAG has previously prepared an opinion on referendums regarding airport siting. A copy of that opinion is attached.

The County's charter only

provides it such authority as the State's general laws provide. San Diego County Charter section 300. A local ordinance purporting to regulate in a field that is fully occupied and conflicts with State general laws is unenforceable. *Societa Per Anzioni De La Navigazioni Itali v. Los Angeles*, 31 Cal. 3d 446 (1982).

2. Question: Can the County and SANDAG take any action(s) that would result in forcing the development of an airport within the San Diego City limits?

Answer: We do not believe that either agency has the power to force the City to develop an airport.

Analysis

The ALUC's statutory framework provides no independent power to direct the establishment of an airport. Public Utilities Code sections 21674 and 21676. The regulatory scheme for review of airport decisions is primarily for planning purposes. Public Utilities Code section 21674. ALUC reviews the decisions of a local agency to site an airport within its jurisdiction but it has no jurisdiction over the operation of airports. Public Utilities Code section 21674(e). The ALUC has authority to review and reverse a decision of local government when it seeks to plan for, develop or change an airport. The local governmental agency retains the power to override the decisions of the ALUC. Public Utilities Code section 21676.

3. Question: Can a state sponsored agency be created that would force an airport on the City of San Diego?

Answer: To answer this question involves a discussion of the nature of the State's relationship with charter cities. The current legislative process does not allow for such an agency. The operation of a new International Airport could certainly be considered a matter of statewide concern. If the state legislature desires to do so, they would probably be able to prepare such legislation.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

JKR:pev(x043.2)

Attachment

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