

MEMORANDUM OF LAW

DATE: March 31, 1993

TO: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: Role of the Board of Governors of the San Diego Stadium Authority Concerning San Diego Jack Murphy Stadium

BACKGROUND

Recently, you asked for advice on the role of the San Diego Stadium Authority Board of Governors with regard to San Diego Jack Murphy Stadium operations. You requested this advice because, in recent months, members of the Board of Governors have indicated their role in Stadium operations, if any, should be made more certain.

The Board of Governors desires to be advised on the meaning of City Council Resolution No. 185576, adopted on November 23, 1965, which established the Stadium Fund for making City lease payments and has asked whether the City Attorney has any conflict of interest in advising them on the subject.

We are absolutely convinced that there is no conflict of interest in giving the advice sought by the Board or, for that matter, any legitimate question of a conflict (especially in view of the observations we are about to make concerning the Board's role). We will express our views to you on these issues and then transmit them to the Board of Governors.

ANALYSIS

Stadium Authority as Owner-Lessor (Landlord)

The San Diego Stadium Authority ("Authority") was created by a Joint Exercise of Powers Agreement ("Agreement") between the City of San Diego and the County of San Diego on January 25, 1966. Its purpose was to acquire a site, finance, construct and lease a multi-purpose stadium to the City.

The Agreement provides that the Authority be administered by a governing board of nine members, each serving in their individual capacities. The Agreement also provides that the City acquire the real property needed for the Stadium and convey it to

the Authority, act for the Authority during planning and construction of the Stadium and, when completed, lease the Stadium from the Authority for an amount of rent sufficient to pay off the indebtedness incurred by the Authority and meet all other terms of the Bond Indenture. A Master Lease ("Stadium Lease") was entered into between the City and the Authority which spelled out all these details. The City took over the completed Stadium on August 20, 1967 and began making rent payments.

Relevance and Significance of
City Council Resolution No. 185576

It is in connection with the Authority's role as a lessor that City Council Resolution No. 185576 becomes most relevant and significant. It is also at this point that any potential conflict of interest question which may arise from our role as attorney to the City and to the Authority needs to be closely examined.

The thrust of the argument raised by some members of the Board of Governors seems to be that Resolution No. 185576 created a fund of money to which the Authority has some integral or inherent legal right. They seem to be contending that the City, acting through the City Council's appropriation ordinances and the City Manager's recommended budget process, has illegally deprived the Authority of funds to which it may be legally entitled. Our views on this question (and the potential conflicts issue) follow.

Resolution No. 185576 provides:

WHEREAS, it is the intent of the City Council that the lease payments for the San Diego Multipurpose Stadium be financed from revenue sources not committed heretofore and without an increase in the ad valorem property taxes; (Emphasis supplied.)
NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. The Auditor and Comptroller is directed to establish a special fund to be known as the Stadium Fund; and
2. All revenues received from the lease or sale of City-owned Midway-Frontier properties, including lease payments heretofore received from the Sports Arena lease of Midway-Frontier properties, together with such sums as the City Council may annually allocate in the Capital Outlay Fund for Stadium purpose, shall be transferred into the Stadium Fund; and
3. Expenditures from this fund shall be

made solely for lease payments on the San Diego Multipurpose Stadium as they fall due. (Emphasis supplied.)

First, it should be noted that the Resolution is unequivocal and absolutely clear that expenditures from this fund be made solely for lease payments on the Stadium as they fall due. (The Recital and Resolve No. 3)

Second, the significance of the wording in Resolve No. 2 only becomes relevant by referring to Section 77 of the San Diego City Charter which creates the Capital Outlay Fund ("Charter Fund"). Section 77 provides that all proceeds from the sale of City-owned real property are to be placed in this Charter Fund. The City Charter then provides that monies in this Charter Fund must be used exclusively for the acquisition of permanent public improvements. Therefore, in order to transfer any monies to the Stadium Fund which are derived from City-owned Midway-Frontier property sales, it is necessary to place the monies first in the Charter Fund.

Resolve No. 2 then provides that the City Council may add such "sums as the City Council may annually allocate" to the Charter Fund for Stadium purposes and then all are transferred into the Stadium Fund to be used solely for lease payments. (Attached to this memorandum are three documents which are relevant to our discussion of the intent of City Council Resolution No. 185576. They are copies of a City Manager's Report to the City Council dated August 12, 1965 entitled, "Proposed Stadium Financing" Enclosure (1), a San Diego Taxpayer's Association Report dated October 21, 1965 entitled, "Stadium Endorsed-Economic Asset" Enclosure (2), and the Ballot Argument for Proposition 1 on the November 1965 ballot Enclosure (3).)

This material makes it abundantly clear that the City Council established the Stadium Fund to assure that the lease payments would always be made by operating funds from the Stadium itself and revenues from the Midway-Frontier properties (including the Sports Arena). The City Council did not create, nor did it intend to create, a fund to which the Stadium Authority could make any proprietary claim.

In summary, the landlord-tenant relationship between the Authority and the City is spelled out in the Stadium Lease. It calls for the City to pay the rent and prohibits the City from "wasting" the premises (reasonable wear and tear aside). As the attorney for the City and the Authority, the City Attorney has assiduously insisted that both parties honor the terms and conditions of the Stadium Lease. We see absolutely no conflict or potential conflict of interest in interpreting or advising on

Resolution No. 185576 because it created no property interest in the Authority, and any argument in favor of such an interest has no merit. However, in accordance with the provisions of the Agreement which created the Authority and our role as the attorney for the Authority, we will refer the matter to the County Counsel of the County of San Diego for his views on the subject. In so doing, we rely upon those provisions of Section 3D of the Agreement which provide:

The attorney for the Authority shall be the duly elected, qualified and acting City Attorney of the City, or his duly authorized deputy, serving ex officio as attorney for the Authority; provided that the attorney for the Authority may call upon the duly appointed, qualified and acting County Counsel of County, or his duly authorized deputy for assistance.

We will request the County Counsel to review our conclusions and communicate directly with you and the Board.

To the extent that disputes have arisen between the City Manager and the Board as to the proposed use of the Stadium Fund for additional capital improvements at the Stadium, we will comment in the next section of this memorandum.

Stadium Authority as an Advisory Board

Following the sale of the Stadium Revenue Bonds in April 1966, the City, as agent for the Authority, began constructing the Stadium. The City Council authorized the major construction contracts and work on the facility proceeded quickly. As the work proceeded, it became evident that the Stadium would be ready for use by tenants in the summer of 1967 (as planned). At that point, the role of the Authority and its Board of Governors in connection with future Stadium operations was deliberated.

The City Council asked the Board of Governors for its views on the issue. The Board replied and the City Council adopted Resolution No. 189578, a copy of which is attached as Enclosure (4), on February 13, 1967. As you can see from the attachment, it was the unanimous decision of the (then) Board that it serve in an advisory capacity to the City Manager and the City Council concerning Stadium operations. Thus, the advisory role of the Board was established.

This advisory role was confirmed by the City Council on April 7, 1980 by Resolution No. 251548, establishing Council Policy 700-40. Copies of the Resolution and Council Policy are attached as Enclosures (5) and (6) respectively. They are self-explanatory. The Board's advisory role may be re-examined at the City Council's pleasure, but it is clear to us that Council Policy 700-40 presently governs this aspect of the relationship.

CONCLUSION

Finally, it is necessary to address one of the underlying reasons why this memorandum is being written. As you know, for some time, various members of the Board have advocated the construction of various additional capital improvements. For budgetary reasons, the City Manager has resisted some (perhaps most) of this importuning and has not recommended major improvements. Whether, in view of current budgetary problems and constraints, the Manager's decisions are justifiable is not our affair. However, we do not believe it is appropriate for members of the Board to raise apparent questions of law in areas that are, indeed, questions of policy. We leave these policy questions in the capable hands of the City Manager, you and your colleagues on the City Council. We trust and believe that we have satisfactorily replied to the legal issues.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:nrp(x043.2)

Enclosures (1) through (6)

ML-93-44

TOP

TOP