

MEMORANDUM OF LAW

DATE: April 16, 1993

TO: Coleman Conrad, Deputy City Manager

FROM: City Attorney

SUBJECT: Ranger/Diver Program

At present, the Ranger/Divers perform certain law enforcement and public safety functions at City lakes and reservoirs. By memorandum of February 24, 1993, you requested that this office review the propriety of using the Water Utility Fund to pay the General Fund for either a dedicated police or lifeguard position to assume the enforcement and safety services currently being undertaken by the Ranger/Divers.

ANALYSIS

As you are aware, the Ranger/Divers' primary duties consist of operating the Water Contact Program; assisting in the support of the City's watershed lands; and providing diving services for the Water Utilities Department. As you noted in your memorandum of February 24, 1993, to Councilmember Judy McCarty, the law enforcement and public safety services provided by the Ranger/Divers are primarily directed toward enforcement of parking, fishing and boating safety regulations. With respect to their water contact duties, the Ranger/Divers perform functions similar to the City Lifeguards. Rather than having the Ranger/Divers provide these law enforcement and public safety services, it has been suggested that a dedicated police or lifeguard position be created for such purposes, and that it be funded out of the Water Utility Fund.

San Diego City Charter section 53 governs the use of the Water Utility Fund. Section 53 provides in relevant part:

There shall be included in the administrative organization of the City a separate utility to be known as the Water Utility
All revenues of the Water Utility shall be deposited in a Water Utility Fund. The Manager shall include in the annual budget the estimated expenditure and reserve requirements

of the Water Utility Fund. The City Council using such estimates as a basis shall include in the annual appropriation ordinance for the Water Utility Fund provision for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual obligations; reserves for future expansion of water utility plant; reserves for future water purchases. In addition thereto, the Council shall levy annually a tax sufficient to provide for the redemption of municipal bonds heretofore or hereafter issued for water purposes; together with a sum sufficient to pay the interest thereon. The amount of money necessary to be raised each year for the redemption of water bonds and the payment of interest thereon and for the retirement of any other funded or contractual indebtedness incurred by purchase or otherwise for the development, conservation or distribution of water shall be charged annually against the Water Utility on the accounts of the City. Only after providing the requirements for Water Utility purposes as set forth above may the City Council in the annual appropriation ordinance provide for the transfer to the General Fund of the City any excess revenues accruing to the Water Utility Fund. Such revenue transferred to the General Fund shall be available thereafter for use for any legal City purpose.

San Diego City Charter section 53.

Our office has consistently opined that the provisions of Charter section 53 mandate that the Water Utility be a financially independent, self-sustaining water utility. See 1980 Ops. S.D. City Att'y 69-73; 1967 Ops. S.D. City Att'y 37-40; 1966

Ops. S.D. City Att'y 157-165; 1965 Ops. S.D. City Att'y 23; 1947 Ops. S.D. City Att'y 98-100; 1933 Ops. S.D. City Att'y 526-531. The expenditure of Water Utility funds therefore must be for the direct benefit of the Water Utility.

The proposed police or lifeguard position would be created in order to provide continuing enforcement and public safety services at the City's lakes and reservoirs. To the extent that such services would directly protect the City's watershed from potential pollution and contamination, we believe that an expenditure of Water Utility funds for such purposes is legally appropriate. See Report to the Committee on Public Facilities and Recreation, November 13, 1991; 1992 Ops. S.D. City Att'y (copy attached for your reference).

The law enforcement and public safety services provided by the Ranger/Divers are partially funded by income derived from the sale of permits, concessions, access, and other water use fees collected at the City's lakes and reservoirs. San Diego City Council Policy 400-3. We would note that there is nothing to preclude the Council from using these funds to assist in funding a police or lifeguard position.

CONCLUSION

In summary, if the Council wishes to use Water Utility funds to pay for a dedicated police or lifeguard position, then pursuant to Charter section 53 the services provided by that position must directly benefit the Water Utility. The proposed position will be established to provide enforcement and public safety services at the City's lakes and reservoirs. To the extent that these services will protect the City's watershed from potential pollution and contamination, the expenditure of Water Utility funds is appropriate and does not threaten the Water Utility's fiscal integrity. Finally, the Council also may consider utilizing the water use fees currently collected at the City lakes and reservoirs to partially fund the proposed position.

We hope this information will be helpful to you. If you have any additional questions, however, please do not hesitate to contact us.

JOHN W. WITT, City Attorney

By

Kelly J. Salt

Deputy City Attorney

KJS:jrl:400:(x043.2)

Attachment

ML-93-46

TOP

TOP