

MEMORANDUM OF LAW

DATE: August 18, 1993

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Noise Abatement Violations - Other Agencies

INTRODUCTION

You have requested our opinion whether the City of San Diego can cite the California Department of Transportation ("CALTRANS") and the County Water Authority ("CWA") for alleged violations of the City of San Diego's noise ordinance (SDMC Section 59.5.0101 et seq.).

After researching this issue, we have concluded that if CALTRANS and CWA are engaged in the construction of their facilities, they are not subject to local regulations.

ANALYSIS

It is well established that cities are preempted from applying their ordinances to state agencies engaged in sovereign activities such as the construction and maintenance of public property. When a state agency engages in such sovereign activities it is not subject to local regulations unless expressly provided by the Constitution or the Legislature has consented to such regulations. *City of Orange v. Valenti*, (1974), 37 Cal App. 3d 240, 244. See also *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal. App. 3d 996, 1001.

We have opined in the past that CWA is an independent political corporate entity. (Report to the Honorable Mayor and City Council, dated October 4, 1991.) It derives its authority and power from the Legislature through the enactment of the County Water Authority Act of 1943. (Statutes of 1943, Chapter 545, as amended, (Cal. Uncodified Water Acts, Act 9100 (Deering 1970)). Moreover, the CWA has been provided with the power to construct and maintain their facilities across or along public streets and highways. (Water Appendix section 45-5.)

CALTRANS' powers and duties are set forth in Government Code Section 14030. Government Code section 14030 provides that the construction and maintenance of designated transportation systems are the responsibility of CALTRANS.

We could find no language in either the Constitution or in any statute that would subject CALTRANS or CWA to local noise regulations. In addition, both CALTRANS and CWA have been provided by the Legislature with the authority to construct and maintain public facilities. The Neighborhood Code Compliance Department has indicated that the local residents are complaining about excessive noise caused by the construction of State Highway 52. Under these circumstances, it is unlikely that we could successfully cite either CALTRANS or CWA for violating our noise ordinance.

The City could report the excessive noise to the Office of Noise Control. The Office of Noise Control was established by the California Noise Control Act of 1973. (Health and Safety Code section 46040) The California Noise Control Act provides:

. . . Where any state agency is carrying out any activity resulting in noise which the director determines amounts to a public nuisance, such agency shall consult with the director to determine possible means of abating such noise.

(Health and Safety Code section 46072.)

Perhaps the director of the Office of Noise Control could discuss the noise complaints with CALTRANS and CWA.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

AYM:ps:532(x043.2)

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