

MEMORANDUM OF LAW

DATE: October 29, 1993

TO: Bruce Herring, Deputy City Manager

FROM: City Attorney

SUBJECT: Rancho Bernardo Library

Question Presented

You sent us a memorandum in which you asked for an opinion regarding the use of park fees to finance the construction of a library in Rancho Bernardo. The City has a grant for the pro-proposed library which requires matching funds be provided within the next two months. You stated that park fee funds are available in another CIP project in Rancho Bernardo and that the library site is located within the use area of the funds. You want to know if these park fee funds can be loaned to construct the library.

Answer

Our answer is that yes, Rancho Bernardo park fees can be loaned for the purpose of building a library in Rancho Bernardo if certain conditions are met.

Discussion

There are two relevant Municipal Code sections regarding the collection and expenditure of park fees. Section 96.0404 requires that park fees shall be deposited in a special fund and that expenditures from said fund shall only be made for certain park and recreational facilities within areas from which they are collected.

In addition, Section 102.0406.0641, which involves special park fees for Rancho Bernardo, states that "fees set forth in this section are assessed in order to recover the cost of acquiring land and developing population based park and recreational facilities to serve the future inhabitants of the subdivision and community" Since a library has been determined by the California courts to be a park facility, park fees could be used to construct a library in a population based park. *Spires v. City of Los Angeles*, 150 Cal. 64 (1906), 37 Ops. Cal. Atty. Gen. 217, 221. It is our understanding, however, that the proposed library is not in a population based park area.

With regard to a loan of park fees, it is appropriate to

"invest" such fees and obtain a fair interest rate pending the actual use of the funds. It is our opinion that the proposed loan of funds would not violate the restrictions on expenditure of such funds. The Municipal Code requires that all park fees collected in connection with the above mentioned sections be deposited in a special fund with a separate revenue and expense account established for park and recreational purposes. The City not only has the right, but indeed the duty, to make prudent investment of these funds as determined by the City Treasurer, per Charter section 45.

If the park fees are loaned for construction of a library, the same rate of interest that would have been earned through any other investment scheme must be matched. Reasonable security must be incorporated into the transaction to guaranty the repayment of the funds. In addition, the loaned funds must be available so that park projects can be completed on schedule.

Conclusion

Park fees may be loaned for the construction of a library, if adequate interest is earned on the loaned funds and the funds are available as needed for park construction projects and the loan is properly secured. The City Treasurer should be consulted to ensure that the proposed loan would provide the same return to the City as a more conventional investment.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb:190(x043.2)

ML-93-98

TOP

TOP