

MEMORANDUM OF LAW

DATE: February 25, 1994

TO: Burch Ertle, Assistant to Zoning Administrator
Neighborhood Code Compliance Department

FROM: City Attorney

SUBJECT: Conditional Use Permit for US West Cellular
Transmitter at San Diego State University

US West Cellular of California, a private corporation, has requested the City to acknowledge they are jurisdictionally exempt from the requirement to obtain a conditional use permit ("CUP") if they locate a cellular communication facility on the campus of San Diego State University. You have asked our office to examine this issue and advise you accordingly.

In general, the state is exempt from a city's zoning regulations. *Hall v. City of Taft*, 47 Cal. 2d 177 (1956). For example, the Regents of the University of California, a state agency, in constructing improvements primarily for educational purposes, is exempt from local building codes and zoning regulations and is also specifically exempt from payment of local permit and inspection fees. *Regents of the University of California v. City of Santa Monica*, 77 Cal. App. 3d 130 (1978). If the property is owned by the State or a subdivision of the State, it does not matter whether the improvement is used by the State or by a lessee of the State, so long as the improvement is primarily for educational purposes. In the *Regents of the University of California* case, the court ruled that the University could construct improvements to Regent's property leased to a credit union without complying with city ordinances requiring a building permit and zoning variance.

The logic and holding of the court in the *Regents of the University of California* case is equally applicable to development issues involving San Diego State University. San Diego State University is administered by the Trustees of the California State University, a subdivision of the State, vested with "full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." Education Code section 66606.

Our conclusion is that if the siting of the transmitter facility on San Diego State's campus is primarily for educational purposes, the City should not require a CUP. We suggest you respond to US West Cellular by asking them to provide you with a statement that the facility will be used primarily for educational purposes executed by a university official who has authority to make that representation on behalf of the Trustees of the California State University.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

RAD:lc:632(x043.2)

ML-94-22

TOP

TOP