

MEMORANDUM OF LAW

DATE: May 19, 1994

TO: Patti Boekamp, Deputy Director - Engineering &
Development, Traffic Engineering Division

FROM: City Attorney

SUBJECT: Legality of Metropolitan Transit Development
Board's Authority to Administer and Enforce The
City of San Diego's Paratransit Ordinance

QUESTION PRESENTED

In a memorandum dated May 17, 1994, you asked whether the agreement for administration of paratransit regulation ("Agreement") between The City of San Diego and the Metropolitan Transit Development Board ("MTDB") violates San Diego City Charter section 11.1 as an unlawful delegation of legislative power.

SHORT ANSWER

No. As a general rule, a legislative body cannot delegate power to make legislative policy. However, only in the event of a total abdication of legislative power will courts condemn legislative action as an unlawful delegation. To withstand scrutiny, a delegation of power must establish an effective mechanism to ensure the proper implementation of its policy decisions. Thus, where the legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine prohibiting delegation of legislative power.

LEGISLATIVE HISTORY

San Diego Charter section 11.1 reads in part as follows:

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of The City of San Diego, so that its members shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including but not limited to the City's annual budget ordinance or any part

thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy.

The voters of The City of San Diego in 1980 approved a ballot measure amending the Charter of The City of San Diego by adding a new section 11.1 entitled "Legislative Power -- Nondelegable." This amendment placed upon the City Council the same prohibition against delegation of legislative power which is imposed by the State Constitution upon the California Legislature. The amendment provided that the Council would be solely and exclusively responsible for all decisions and actions in regard to raising and spending public funds. That power could not be delegated. The section provides further that the need of the citizens for police protection shall be accorded priority in the decisionmaking process. This item appeared on the June 3, 1980 ballot as Proposition A.

This proposition was an alternative to Proposition B, a ballot measure which the San Diego Police Officers Association qualified by the initiative process proposing an amendment to section 129.1 of the Charter of The City of San Diego. The amendment provided for impasse resolution procedures, the thrust of which was compulsory binding arbitration.

In researching the legislative history of Proposition A, we found the following statement by then Mayor Pete Wilson at a City Council meeting dated March 10, 1980 revealing that Proposition A was an alternative to Proposition B.

The ordinance, which I think has been distributed to all of you, is a straightforward effort to provide a positive alternative to the item we have just voted to place upon the ballot (Proposition B) as a result of the qualification of the initiative measure proposing binding arbitration, and I think the language is clear. The proposition that would appear upon the ballot ... notes the constitutional provision of the State Constitution which prohibits the Legislature's delegation of its legislative power or responsibility and would state that same prohibition applies to the City Council and the performance of the duties that we were elected to perform in the raising or spending of public monies including, but not limited to the annual budget ordinance or any part of the budget and the annual ordinance setting compensation or any other ordinance or resolution setting public policy. It further states that in setting compensation for City employees, the Council shall adopt an ordinance no later than May 30 of each year after considering all relevant evidence, including but not limited to the needs of the

citizens of the City of San Diego for municipal services and the ability of the citizens to pay for those services, provided, however, that the City Council shall give priority in the funding of municipal services to the need of the citizens for police protection.

Consequently, the purpose of Charter section 11.1 was to serve as an alternative to Proposition B on the June 3, 1980 ballot. It was not intended to restrict the City's authority to delegate the administration and regulation of the paratransit system to MTDB. However, the City is subject to the same prohibition against delegation of legislative power as is imposed upon the State Legislature by article XI, section 11a of the California Constitution. The following is our analysis.

DISCUSSION

I. General Principles

Article XI, section 11a of the California Constitution provides:

The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

The general rule is well established that legislative power cannot be delegated by a municipality unless certain conditions are met. 2 McQuillin, *The Law of Municipal Corporations* Section 10.40 (3d ed. 1988). The purpose of the doctrine prohibiting delegation of legislative power is to assure that "truly fundamental issues will be resolved by the Legislature, and that a grant of authority is accompanied by safeguards adequate to prevent its abuse." *Kugler v. Yocum*, 69 Cal. 2d 371, 376 (1968) (quoting *Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control*, 65 Cal. 2d 349, 369 (1966)).

"Several equally well established principles, however, serve to limit the scope of the doctrine proscribing delegations of legislative power." *Kugler*, 69 Cal. 2d at 375. Generally speaking, only in the event of total abdication of legislative power through failure to render basic policy decisions or to assure that they are implemented as made, will courts condemn a particular delegation of power by a legislative body. *Id.* at 384. The legislature may, "after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect (citation omitted)." *Id.* at 376.

To overcome a challenge, reasonable grants of power to an

administrative agency must be accompanied by suitable safeguards to guide the use of the power and protect against misuse. *Id.* at 381; *CEED v. California Coastal Zone Conservation Commission*, 43 Cal. App. 3d 306, 325 (1974); See also *Cerni v. City of Cloverdale*, 191 Cal. App. 3d 1471, 1479 (1987) (upholding a Memorandum of Understanding adopted by a city council providing that an employee subject to termination or discipline has the right to an appeal before an appeals board and that a decision by a majority of the board is binding on the city and on the employee). Courts have interpreted the requirement for standards as "but one method for the effective implementation of the legislative policy decision; the requirement possesses no sacrosanct quality in itself so long as its purpose may otherwise be assured." *Kugler*, 69 Cal. 2d at 381. "Moreover, the fact that an ordinance vests an agency with unlimited discretion, or power to exercise a judgment of high order does not confer unrestricted power (emphasis added)." *Cerni*, 191 Cal. App. 3d at 1479-80.

II. Application

Turning to the present situation, the City's delegation of power to the MTDB to administer and enforce the Paratransit Ordinance ("Ordinance") does not fall within the general proscription against delegation of legislative power as discussed above. As a threshold matter, MTDB is authorized by state statute to enter into contracts with any city in its area of jurisdiction to regulate transportation services. (See Public Utility Code Section 120266.)

Applying the general rules regarding proper delegation of power outlined above, the City rendered basic policy decisions with respect to paratransit services in adopting the Ordinance. The subsequent minor changes in the Ordinance in the application and execution of the policy by MTDB does not constitute legislative nor public policy delegation. *Kugler*, 69 Cal. 2d at 377. Thus, the Agreement which authorizes MTDB to enforce policies and regulations and amend those regulations from "time to time" does not constitute an unlawful delegation of legislative policy making power. MTDB's authority is expressly limited to enforcement and administration. No policy making or legislative power has been expressly or implicitly delegated.

The Ordinance sets the public policy with respect to paratransit services; the MTDB administers and enforces that policy. The fact that MTDB may amend the rules, regulations or policies in administering the Ordinance does not, by itself, render the delegation of power infirm, since this grant of authority is accompanied by adequate safeguards. For example, section six of the Agreement and section four of the first

amendment to the Agreement provide for the City Manager, by executing a Memorandum of Understanding, to supplement the Agreement as needed. These provisions afford the City ample opportunity to exercise its retained policy making authority. Thus, there has not been a "total abdication" of legislative power.

The Agreement and amendment to the Agreement evidence the City's fulfillment of its obligation to determine the "truly fundamental" issues with respect to paratransit services. Subsequent delegation of power to MTDB either to "fill up the details" from "time to time," or which grants MTDB "unlimited discretion to exercise judgments of a high order," is not precluded by the general proscription against delegation by the legislature of its legislative power as that proscription has been interpreted by decisional law.

CONCLUSION

In light of the legislative intent of Charter section 11.1, the contractual relationship between the City and MTDB does not violate section 11.1. Also, based on the foregoing principles and discussion, the Agreement does not violate the general proscription against delegation of legislative power. To be precluded, MTDB's authorization to administer paratransit services would have to be a total abdication of the City's power to set policy and regulations for paratransit services. The safeguards established in the Agreement evidence the City Council's fulfillment of their obligation to determine the fundamental issues and establish adequate safeguards. Therefore, the City's delegation of power to MTDB can not be reasonably construed as a total abdication of their power to regulate paratransit services in violation of the proscription against delegating legislative power.

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By

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cc Jack Limber, General Counsel, MTDB

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