

MEMORANDUM OF LAW

DATE: June 29, 1995

TO: Councilmember Scott Harvey

FROM: City Attorney

SUBJECT: AB 318 - Utility "Profits" and Restrictions of Proposition
13

In reviewing a letter from the California Research Bureau supporting Assembly Bill 318 (Katz)F

We note that this bill proposes to add Section 113 to the Water Code to limit the rates a municipal utility may charge and is being opposed by the City of San Diego.

you noticed a claim that the San

Diego Water Utility enjoyed a "profit" of 14% and you ask whether the utility's charges are in violation of Proposition 13. Our response will cover both the Proposition 13 aspect and the "profit" aspect of your inquiry.

Proposition 13 added Article XIII.A. to the California Constitution which in relevant part restricts cities from imposing "special taxes" without a two-thirds vote of the electorate. However, the Legislature has expressly defined the term "special tax" and has expressly excluded from this term "any fee which does not exceed the reasonable cost of providing the service . . . for which the fee is charged and which is not levied for general revenue purposes." California Government Code section 50076.

The Water Utility imposes water service fees (San Diego Municipal Code section 67.55) and water capacity charges (section 67.72) which are specifically determined to reimburse the City for the cost of materials, labor, equipment and other incidental costs of supplying water. Municipal Code section 67.05. Hence we have no hesitancy in advising that both water service fees and water capacity fees are not special taxes and hence are not subject to the restrictions of Proposition 13. *Carlsbad Mun. Water District v. QLC Corp.*, 2 Cal. App. 4th 479, 484 (1992); *J.W. Jones Companies v. City of San Diego*, 157 Cal. App. 3d 745, 752 (1984).

As to the claim of "profits," we attach the City Manager's memos of June 23, 1995 to us and June 2, 1995 to you which detail that Water Utility Fund positive balances are not "profits" but rather are planned purposes balances, calculated either for rate stabilization or for

anticipated capital expenditures to maintain the integrity of the system.

Lastly I note that Assembly Member Katz's bill is based on a premise that Los Angeles Water and Power transfers one hundred million dollars to its general fund for "nonutility related services." AB 318, section 113(d). As you can see from the last paragraph of the June 23, 1995 City Manager's memo, there are no such transfers by the City of San Diego's Water Utility.

I trust the above's legal and factual explanations confirm that the City Water Utility fees are not restricted by Proposition 13, are not "profits" and are not surrogate taxes funneled to the general fund.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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Attachments

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ML-95-41