MEMORANDUM OF LAW

DATE: November 13, 1995

TO: Mac Strobl, Director, Intergovernmental Relations Department

FROM: City Attorney

SUBJECT: Charter City Authority/Proposition 62

INTRODUCTION

You recently asked for a review of the "legal circumstances (prerogatives) applicable to charter cities, as distinguished from general law cities." Much has been written on this subject over the course of the years, both by courts as well as legal commentators. Some general principles apply but, as emphasized by the California Supreme Court, each case must be decided upon its own unique set of facts. I will attempt to summarize the relevant general principles below.

You also requested any materials previously prepared by our office on the applicability of Proposition 62 to charter cities. Enclosed is a memorandum, dated October 18, 1995, from our office to the City Manager regarding that very subject. That memorandum refers to a previous opinion, issued in January of 1987, which concluded that Proposition 62 was not applicable to the City of San Diego as a charter city. As the October, 1995, memorandum indicates, nothing has occurred since the issuance of that previous report to change our opinion that Proposition 62 is not applicable to the City of San Diego and, in fact, the recent decision in the case Santa Clara County Local Transportation Authority v. Guardino, 11 Cal. 4th 220 (1995), reinforces that opinion.

ANALYSIS

A charter city has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter itself. Cal. Const., art. XI, Section 5(a); City of Grass Valley v. Walkinshaw, 34 Cal. 2d 595, 598 (1949). "The charter operates not as a grant of power but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation." Id. at 598-599. The rules of statutory construction governing charter provisions provide that:

> The exercise of . . . power . . . is favored against the existence of any

> limitation or restriction thereon which is not expressly stated in the charter . . . . So guided, reason dictates that the full exercise of the power is permitted except as clearly and explicitly curtailed. Thus in construing the city's charter a restriction on the exercise of municipal power may not be implied.

Id. at 599. "A city charter is thus construed to permit the exercise of all powers not expressly limited by the charter or by superior state or federal law." Taylor v. Crane, 24 Cal. 3d 442, 450 (1979).

As to such superior state law:

> A charter city is constitutionally entitled to exercise exclusive authority over all matters deemed to be "municipal affairs." Citation. In such cases, the city charter supersedes conflicting state law. If the statute in question addresses an area of "statewide concern," however, then it is deemed applicable to charter cities. Citations. In deciding whether a matter is a municipal affair or of statewide concern, the Legislature's declared intent to preempt all local law is important but not determinative, i.e., courts may sometime conclude that a matter is a municipal concern despite a legislative declaration preempting home rule. Citation.

DeVita v. County of Napa, 9 Cal. 4th 763, 783 (1995).

> As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine).

Bishop v. City of San Jose, 1 Cal. 3d 56, 61-62 (1969).F

The reference to the preemption doctrine here is a little misleading. The full extent of the preemption doctrine is applicable where the Legislature intends to fully occupy a field, whether of statewide concern or municipal affair, and thus preempts legislation or action of a general law (as opposed to charter) city. Baron v. City of Los Angeles, 2 Cal. 3d 535, 539 n. 4 (1970) (citing Professional Fire Fighters, Inc. v. City of Los Angeles, 60

Cal. 2d 276, 292 n. 11 (1963)). The import of the quotation is that charter cities may legislate on matters of statewide concern where the Legislature has not intended to occupy the field and the local law does not conflict with the state law. Id. at 541; Bishop, 1 Cal. 3d at 62.

In sum, a charter city may legislate or act on "municipal affairs" even if such activity conflicts with state law. Similarly, the state Legislature may not enact legislation affecting a charter city on a matter considered a municipal affair. Conversely, on a matter determined to be of "statewide concern" a charter city may not enact legislation that conflicts with state law. The charter city may, however, enact legislation not in conflict with state law unless the Legislature has intended to preempt that field.

Generally, the first step in determining whether a charter city's action is valid is to determine whether an actual conflict exists with state law. If not, no further analysis is needed. California Fed. Savings & Loan Assn. v. City of Los Angeles, 54 Cal. 3d 1, 16-17 (1991); Bishop, 1 Cal. 3d at 62. But see Baron v. City of Los Angeles, 2 Cal. 3d 535, 539 (1970). If there is a conflict,

> "it becomes necessary for the courts to decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern." In other words, "No exact definition of the term 'municipal affairs' can be formulated, and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case. The comprehensive nature of the power to legislate on "municipal affairs" is, however, conceded in all the decisions . . . ."

Bishop, 1 Cal. 3d at 62 (quoting Butterworth v. Boyd, 12 Cal. 2d 140, 147 (1938). See also California Fed., 54 Cal. 3d at 16.

While courts will give "great weight" to the purpose of the state Legislature in enacting general laws when deciding whether a matter is a municipal affair or of statewide concern, the Legislature's intent does not control. The Legislature may not determine what is a municipal affair or turn such affair into a matter of statewide concern. Bishop, 1 Cal. 3d at 63. Courts, on the other hand, are not to "compartmentalize" areas of governmental activity as either a municipal affair or of statewide concern. California Fed., 54 Cal. 3d at 17-18. Very generally, a matter is of statewide concern if, "under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city . . . . The hinge of

the decision is the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations." Id. at 18. With these principles in mind, there are areas of governmental activity that can generally be characterized as a municipal affair or of statewide concern. Our office can advise on any particular matter if guidance is needed.

CONCLUSION

I hope this memorandum is helpful. The principles outlined above are very general ones, and each particular matter needs to be separately analyzed. We will be glad to assist you if further guidance is needed.

JOHN W. WITT, City Attorney
By
Leslie J. Girard
Chief Deputy City Attorney

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Enclosure
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