

MEMORANDUM OF LAW

DATE: June 19, 1998

TO: Shari Sacks, Financing Services Manager, Financial and Technical Support Services

FROM: Kelly J. Salt, Deputy City Attorney

SUBJECT: Use of Moneys from the Special Assessment District Delinquency Fund

Question Presented

May moneys deposited into the Special Assessment District Delinquency Fund [Fund] be used to pay for costs incurred by the City in administering assessment districts formed pursuant to the Improvement Act of 1911 (California Streets and Highways Code sections 5000-6794) [1911 Act]?

Short Answer

Moneys deposited into the Fund may be used to pay for costs incurred by the City in administering 1911 Act assessment districts.

Analysis

The Fund is established pursuant to San Diego Municipal Code section 61.2390. This section provides that the Fund is established to help fulfill the purposes of Chapter VI of the Municipal Code. Chapter VI of the Municipal Code contains various Divisions, among which are Divisions governing the formation of, and the levy and collection of assessments for assessment districts authorized pursuant to the 1911 Act, the Improvement Bond Act of 1915 (California Streets and Highways Code sections 8500-8887) [1915 Act], the Mello-Roos Community Facilities District Act of 1982 (California Streets and Highways Code sections 53311-53368.2) [Mello-Roos Act], and the Landscaping and Lighting Act of 1972 (California Streets and Highways Code sections 22500-22679) [1972 Act].

Pursuant to Municipal Code section 61.2391, when payments for penalty and interest charges are received by the City Treasurer for delinquent amounts assessed to properties under the provisions of the 1915 Act, the Mello-Roos Act, and the 1972 Act, the payments are deposited into the Fund. Delinquency penalties and interest thereon may be retained by the City.

City of Camarillo v. County of Ventura, 26 Cal. App. 4th 1351 (1994). Interest earnings on moneys deposited into the Fund remain in the Fund. No penalties or interest charges are deposited into the Fund from delinquent assessments for 1911 Act districts because the City does not collect such delinquencies. Cal. Sts. & High. Code 6500-6501.1.

The provisions of Municipal Code section 61.2392 govern the purposes for which moneys deposited into the Fund may be used. This section provides in part that moneys deposited into the Fund may be expended for “[t]he payment of costs incurred in fulfilling the City’s duties under a bond indenture or any similar obligation.” San Diego Municipal Code 61.2392 A. Administering a 1911 Act assessment district helps fulfill the purposes of Chapter VI of the Municipal Code. Moreover, the financing documents for each 1911 Act assessment district within the City establish certain administrative duties for the City on behalf of each district. Consequently, moneys deposited into the Fund may be used to pay for costs incurred by the City in fulfilling the purposes of Chapter VI and its duties to administer 1911 Act assessment districts.

Conclusion

The Fund was established to fulfill the purposes of Chapter VI of the Municipal Code. One of the purposes of Chapter VI is the formation of, and the levy and collection of assessments for 1911 Act assessment districts. Moneys deposited into the Fund are received from penalty and interest charges imposed on delinquent amounts assessed pursuant to the 1915 Act, the Mello-Roos Act, and the 1972 Act. One of the purposes for which moneys deposited into the Fund may be used is the payment of costs incurred in fulfilling the City’s duties under a bond indenture or similar obligation. The financing documents for each of the 1911 Act assessment districts establishes certain administrative duties for the City on behalf of the districts. The use of the moneys in the Fund to fulfill the duties imposed by these obligations therefore is authorized pursuant to the Municipal Code.

CASEY GWINN, City Attorney

By

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