

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: January 28, 2002

TO: Richard Mendes, Utilities General Manager

FROM: City Attorney

SUBJECT: Reward to Deter Sewer System Vandalism

On a priority basis, you recently asked whether the Metropolitan Wastewater Department could offer a monetary reward for the capture and conviction of person(s) involved in the vandalism of sewer collection property. This necessarily involves the analysis of (a) municipal authority to offer a reward, and (b) the authority for the source of the funds. Our analysis follows:

1. MUNICIPAL AUTHORITY FOR A REWARD

Municipalities have been given express authority to offer rewards for both the identity and apprehension of persons for vandalism on public property.

§ 53069.5. Reward for information concerning persons causing death, injury or property damage; liability for reward

A local agency, as defined in Section 54951, may offer and pay a reward, the amount thereof to be determined by the local agency, for information leading to the determination of the identity of, and the apprehension of, any person whose willful misconduct results in injury or death to any person or who willfully damages or destroys any property.

Any person whose willful misconduct has resulted in injury or death to any student or any person employed by or performing volunteer services for a local agency or who has willfully damaged or destroyed any property of a local agency or any property of any other local agency or state or federal agency located within the boundaries of the local agency shall be liable for the amount of any reward paid pursuant to this section and if he is an unemancipated minor his parent or guardian shall also be liable for the amount.

California Government Code section 53069.5 [emphasis added]

Such statutory authority is clear and unambiguous. Further, "local agency" with its reference to California Government Code section 54941 expressly includes chartered cities, such as the City of San Diego. Therefore the City of San Diego as a chartered city has statutory authority to offer a reward for the identity, apprehension, or conviction of any person involved in vandalism of the public sewer system. Any contrary indication in this Office's 1936 opinion regarding a reward for murder is expressly rescinded.

2. SEWER REVENUE FUND AS SOURCE OF REWARD

This Office has consistently set out the restrictions on the Sewer Revenue Fund from both Section 64.0403 of the San Diego Municipal Code and the bond covenants in each of the Sewer Revenue Bond issues of 1993, 1995, 1997, and 1999. See City Attorney Memorandum of Law, July 12, 2001.

Sewer Revenue Fund Established

(a) There is hereby created a "Sewer Revenue Fund." All revenues derived from the operation of the wastewater system shall be paid into the Sewer Revenue Fund.

(b) All revenues shall be used for the following purposes only:

- (1) Paying the cost of maintenance and operation of the City's wastewater system.
- (2) Paying all of any part of the cost and expense of extending, constructing, reconstructing, or *improving the City's wastewater system* or any part thereof.
- (3) Any purpose authorized by Section 90.2 of the City Charter.
- (4) Paying the cost of mitigation of fair share overburdens within any City Council district as more fully set forth in Section 64.0403(c). . . .

San Diego Municipal Code § 64.0403 [emphasis added]

From the above, we have no hesitancy concluding that a reward, the principal purpose of which is to deter destruction of sewer collection property, is directly related to "improving the City's wastewater system." This conclusion is consistent with authorization of similar charges against the Sewer Revenue Fund. See City Attorney Memorandum of Law, April 5, 1982 (Mission Bay Water Quality); City Attorney Memorandum of Law, April 6, 1987 (Mission Bay Sewage Interceptor System).

While a reward is an appropriate charge of the Sewer Revenue Fund, the amount and conditions of same are legislative decisions and therefore should be set by the Mayor and City Council. See San Diego City Charter section 11; California Government Code section 53069.5.

CONCLUSION

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The City of San Diego is authorized by express statute to offer a reward to apprehend anyone who damages property of the wastewater system. The source of such reward is a proper charge of the Sewer Revenue Fund while the amount and other conditions are within the purview of the Mayor and City Council.

I trust this is responsive to your expedited request.

CASEY GWINN, City Attorney

By

Ted Bromfield
Senior Deputy City Attorney

TB:mb

cc: Scott Tulloch

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