

OPINION NUMBER 99-1

DATE: April 15, 1999

SUBJECT: Application of Charter Sections 90.1 and 90.2 to Loan Contracts
Otherwise Allowed by Law

REQUESTED BY: George Loveland, Deputy City Manager

PREPARED BY: City Attorney

QUESTION PRESENTED

Do San Diego City Charter [Charter] sections 90.1 and 90.2 prohibit the City of San Diego [City] from entering into loan contracts for improvements to the City's waterworks and sewer systems without a vote of the electorate where the indebtedness is not otherwise prohibited by law?

SHORT ANSWER

No. Charter sections 90.1 and 90.2 require a vote of the electorate for the City to issue "revenue bonds" for the waterworks and sewer systems. The term "revenue bond" has a particular meaning as used in the Charter, and the sections do not prohibit the City from accepting loans where the indebtedness is not otherwise prohibited by law. In this particular case, the City may thus enter into a modified contract with the State of California for a no-interest State Revolving Fund loan.

BACKGROUND

The City of San Diego has applied to the State Water Resources Control Board [Board] to receive approximately \$86.557 million in zero-interest State Revolving Fund [SRF] loans for five projects expressly selected to upgrade the City's sewer (or wastewater treatment) system.¹ The Board administers and allocates funds received under the federal Clean Water Act (33 U.S.C.A. 1251 - 1386) and has established the State Water Pollution Control Revolving Fund, also known as the SRF, (California Water Code 13475 – 13485) to govern the use of such funds.

In accordance with the State's rules, municipal sewer agencies apply for zero-interest loans to be repaid in full within twenty years after completion of an approved project. The terms and conditions for use and repayment of the funds are contained in a standard "loan program

contract” [Standard Contract] used by the Board to standardize the administration of the program.

In 1992, the Metropolitan Wastewater Department [Department] (previously known as the Clean Water Program) asked the City Attorney’s Office what legal restrictions the City had in qualifying for receipt of SRF funds. The Office issued a Memorandum of Law, dated October 19, 1992, and enclosed as Attachment A, analyzing various state constitutional and general Charter restrictions. In that Memorandum, the Office concluded that general debt limitations contained in the state constitution and Charter would not preclude acceptance of SRF funds “if the [City’s] Sewer Revenue Fund is identified in the [Standard Contract] as the *exclusive* source of funds for repayment.” Attachment A at p. 7 (emphasis added). The identification of such exclusive repayment source makes applicable the concept known as the “special fund” doctrine, which makes inapplicable the general debt limitation provisions of the state constitution and Charter. *See generally* Attachment A at pp. 4-6.

Subsequently, \$1,165,410,000 in Sewer Revenue Bonds were issued by the Public Facilities Finance Authority of the City [PFFA] in various series to finance necessary sewer upgrades.² These bonds were issued using an installment purchase agreement between PFFA and the City, as authorized by Charter section 99. *See* Attachment B. In addition to the funds received from the issuance of the revenue bonds, the City was still interested in pursuing the SRF loan, if possible, as an additional source of funds to assist in the massive capital improvement project underway. In the course of advising on the revenue bond issuances, however, the City’s private financial advisors, Public Resources Advisory Group [PRAG], and its bond counsel, Orrick, Herrington & Sutcliffe [Orrick], reexamined the Standard Contract and raised questions as to whether the terms of the Standard contract conflicted with covenants applicable to the Sewer Revenue Bond issuances, or debt limitation issues imposed by the Charter.

To resolve the issues raised by PRAG and Orrick, the City proposed to substitute an installment purchase agreement, involving certificates of participation [COPs] representing an undivided interest in installment payments from the Sewer Revenue Fund, for the Standard Contract. This proposal was made by the City’s bond counsel as a compromise to the State’s Standard Contract provisions and to defer consideration of whether the Charter conflicts with the Standard Contract. In a response to the Board, dated December 10, 1998, and enclosed as Attachment C, discussing the merits of the proposal, the City correctly pointed out that: [t]he City’s Charter prohibits it from borrowing from the [Board] using the standard SRF Loan Contract without voter approval.” Attachment C at p. 1.

On January 21, 1999, the Board considered the City’s request for a substitute agreement involving COPs but declined to proceed under that type of agreement. It did, however, indicate a willingness to modify the Standard Contract to provide that all repayments be made solely from net system revenues of the Sewer Revenue Fund and to subordinate the state loan amounts to the existing revenue bonds.

A subsequent issue has arisen, however, one not previously analyzed by this Office. Charter sections 90.1 and 90.2 require a vote of the electorate for the City to issue “revenue bonds” for the purpose of raising funds for capital projects for the waterworks or sewer systems. The issue addressed in this Opinion is whether the SRF loan would be considered a “revenue

bond” for purposes of those sections, prohibiting the City from accepting such a loan without a vote of the electorate.³

ANALYSIS

I

A MODIFIED STANDARD CONTRACT WOULD NOT VIOLATE GENERAL MUNICIPAL DEBT LIMITATIONS

With respect to the general debt limitation provisions of California Constitution, article XI, section 18; and Charter section 90, we reaffirm our analysis and conclusion stated in the Memorandum of Law enclosed as Attachment A. In brief, that analysis concluded that a loan subject to repayment solely from the net revenues of the City's Sewer Revenue Fund (the "special fund" doctrine), and subordinate to the bonds previously issued by PFFA, would not violate those statutory provisions. The Board's Standard Contract, if modified as set forth above and in Attachment A, would not run afoul of these two provisions for those reasons. *See also* Footnote 3. Although, as this Opinion concludes, the modified Standard Contract need not be approved by the electorate, it must be adopted pursuant to the provisions of Charter section 99, relating to long term contracts, and which requires an ordinance and two-thirds vote of the Council.

II

CHARTER SECTIONS 90.1 AND 90.2 DO NOT REQUIRE A VOTE OF THE ELECTORATE FOR THE CITY TO ACCEPT LOANS SUCH AS THE STATE REVOLVING FUND LOAN

A. Applicable Rules of Statutory Construction.

This analysis involves the interpretation of statutes, in particular certain provisions of the Charter. A review of the law regarding the application and interpretation of city charters is thus appropriate.

A charter city, such as San Diego, 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, 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. . . . [T]he 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 as restriction on the exercise of municipal power may not be implied."

Id. at 598-599; *see also City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718, 724 (1966). "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); *see*

also *City of Redondo Beach v. Taxpayers, Property Owners, etc.*, 54 Cal. 2d 126, 137 (1960), citing *West Coast Advertising Co. v. City and County of San Francisco*, 14 Cal. 2d 516, 522 (1939); *City of Santa Monica*, 245 Cal. App. 2d at 724.

As to such superior state law: “A charter city is constitutionally entitled to exercise exclusive authority over all matter deemed to be ‘municipal affairs.’ . . . In such cases, the city charter supersedes conflicting state law.” *DeVita v. County of Napa*, 9 Cal. 4th 763, 783 (1995) (citations omitted). While the term “municipal affair” has no exact definition, bond issuances for municipal purposes are “clearly” municipal affairs within the meaning of the doctrine. *City of Redondo Beach*, 54 Cal. 2d at 137, citing *City of Grass Valley*, 34 Cal. 2d at 599-600; *City of Santa Monica*, 245 Cal. App. 2d at 724. Also, “the manner in which a city is empowered to form a contract is generally a ‘municipal affair’ which can be controlled by the terms of its charter. . . . Thus if a city charter specifies the manner in which that city may enter into a contract, the terms of the charter control over otherwise applicable state law.” *FSPP v. City of Los Angeles*, 65 Cal. App. 4th 650, 661 (1998) (citations omitted).

Regarding the interpretation of charters:

Even though the provisions of a city charter displace state statutes which would otherwise be applicable to municipal affairs, “[t]he provisions of a charter are the law of the State and have the force and effect of legislative enactments.” (Cal. Const., art. XI, 3(a).) As laws of the state, charter provisions are interpreted according to the normal rules of statutory construction. . . . In construing a charter, the objective is to determine the legislative intent, and the prime determinant is the plain meaning of the language of the charter. “Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history.” [*Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 172 (1994).]

FSPP, 65 Cal. App. 4th at 633-634.

“Significance, if possible, should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, . . .” *DeYoung v. City of San Diego*, 147 Cal. App. 3d 11, 18 (1983). A specific intent controls a general intent if the two conflict. Cal. Code Civ. Proc. 1859; Cal. Civ. Code 3534. With these principles in mind, we turn to the Charter language at issue.

B. The Term “Revenue Bond” Has a Specific Meaning in Sections 90.1 and 90.2, Which Does Not Include a Loan Such as the SRF Loan.

Charter sections 90.1 and 90.2 set forth comprehensive procedures for the issuance of “revenue bonds” to raise funds for improvements to the City’s waterworks and sewer systems, respectively. Originally added to the Charter in 1955 and 1957, respectively, the language used in the sections to describe “revenue bonds” is important because it reflects what the drafters and electors had in mind when the sections were adopted. In relevant part here, section 90.2 provides⁴:

[Definitions]

....

“Bond” or “bonds” mean sewer revenue bonds issued hereunder payable from the Sewer Revenue Fund.

....

Subsection 1. Revenue bonds may be issued as provided in this section

Subsection 2. . . . [T]he Council is hereby authorized to issue, . . . revenue bonds in total principal amount not to exceed \$42,500,000. . . . Revenue bonds, if any, issued under this section in excess of . . . \$42,500,000 shall be authorized by proceedings taken in the manner hereinafter provided under Subsection 3.

Subsection 3. . . . The Council, . . . shall submit to the qualified voters of the City at an election held for that purpose the question of issuing revenue bonds pursuant to this section

Subsection 4. The Council may issue all bonds authorized at an election in one issue or in two or more series and may fix different dates and maturities for the bonds of each series. . . . The bonds of any issue or series issued under this section may be serial bonds or term bonds or any combination thereof with such maturities as may be determined by the Council, but no bond shall run more than 40 years from its date. . . .

Said bonds shall be issued in negotiable form and shall be negotiable. . . .

Subdivision A. REVENUE BONDS - TERMS AND CONDITION [sic]: In any ordinance providing for the issuance of revenue bonds under this section, the Council may fix the terms and conditions thereof . . . including . . . any or all of the following:

(1) The denomination or denominations of the bonds, the medium of payment thereof, the place or places of payment thereof, . . . the form of said bonds . . . and of interest coupons pertaining thereto, . . . and the manual . . . and facsimile signatures to be affixed to said bonds . . . and the facsimile signature to be affixed to interest coupons;

Subsection 5. LIMITATIONS. Revenue bonds issued under this section shall be issued substantially in compliance with the following limitations:

....

(c) Said bonds shall be sold only at public sale Any such revenue bonds may be sold at a fixed rate of interest or the bidders may be invited to state the rate or

rates of interest at which they will purchase said bonds,

(d) Said bonds shall be sold for not less than par and accrued interest to date of delivery. . . .

As discussed above, the seminal issue presented in this matter is the meaning of the term “revenue bond” as used in the Charter. Numerous definitions of “revenue bond” or “bond” exist in state law. *See, e.g.*, Cal. Gov’t Code 5401, 5601, 53570(b), 53892.2. Such definitions are very broad, and could be interpreted to apply to any form of indebtedness of a municipality, including loan contracts.⁵ However, such definitions are not controlling on the meaning of the Charter sections. *See* Part II.A, above. We must look to the plain language of the Charter, and any available legislative history, to discern the meaning of the term.

The plain language of the Charter section appears to have a limited meaning. The Charter speaks in terms of “issuance” of revenue bonds; “denominations” of the bonds; “series” of bonds; “maturities;” “negotiable form;” interest coupons; signatures affixed to the bonds and interest coupons; “par” value; public sale; and bidders for the bonds. These concepts do not appear applicable to loan contracts, but more clearly attach to what might be called “traditional bonds.” A bond is defined in *Webster’s Ninth New Collegiate Dictionary* as “(c) an interest-bearing certificate of public or private indebtedness a 20-year ~ issue to finance a new courthouse.” *Id.* at p. 166 (1988). A loan, on the other hand, is described as “money lent at interest;” “lend” being defined, in part, as “to let out (money) for temporary use on condition of repayment with interest.” *Id.* at 684, 700. The former seems relevant to the Charter sections, not the latter.

What legislative history exists for the Charter sections appears to confirm this interpretation. As adopted in 1956 as Proposition C (effective in 1957), section 90.2 did not contain an authorization for the Council to issue any revenue bonds. *See* Attachment D. An amendment in 1960, Proposition A (effective in 1961), authorized the Council to issue up to \$42.5 million in revenue bonds (see subsection 2, above). *See* Attachment E. No legislative history for the original charter amendment exists, but an “Argument for Proposition A,” authorizing the bond issuance by the Council, was printed in the sample ballot for that election. *See* Attachment F. It speaks in terms of a “revenue bond issue,” and also speaks of “financial plans for retiring the bonds,” and “complete retirement of the revenue bond issue.” Again, these concepts appear relevant to a more traditional bond issuance.

Other language in the Charter also supports a conclusion that the term “revenue bond” in the Charter sections has a specific meaning. Certain provisions of the Charter detail limitations on all types of liabilities, including loans. For example, section 74, relating to certain necessary appropriations, refers broadly to “the debt” of the City. Similarly, section 80, relating to money required to be in the treasury to pay liabilities, refers to a “contract, agreement, or other obligation, involving the expenditure of money” Also, section 99, the City’s equivalent to the debt limitation in the state constitution, refers to “any indebtedness or liability in any manner” Thus, the Charter provides for broad limitations in certain circumstances. We must assume that if the drafters of the sections and the electorate intended for the sections to have broad applicability, the language would have been appropriately broad, as in other Charter

sections. That it is not indicative of the intent of the voters that a specific meaning apply.⁶ *Cf. People v. Overstreet*, 42 Cal. 3d 891, 897 (1986) (legislature is presumed to be aware of existing laws and to have enacted amendments or changes in light of such existing laws).

Using the principles of statutory construction set forth above, one must conclude that the drafters of the sections and the electorate had in mind the more traditional “bond” rather than any other form of indebtedness or liability. The language and context of the references in the Charter sections are more specific and narrow than other sections of the Charter that refer to “indebtedness” or “liability.” Additionally, we must remember that a charter is basically a document of limitation, and restrictions on the exercise of power may not be implied if not explicitly set forth. *See* Part II.A, above. Sections 90.1 and 90.2 do not proscribe any other lawful forms of financing for sewer and water improvements, they merely prescribe the form of a particular type of financing. Thus construed, and in light of the language and context of the entire Charter, we conclude that the term “revenue bond” as used in Sections 90.1 and 90.2 refers to a traditional form of “bond” but does not apply to other forms of indebtedness, such as loan contracts.

CONCLUSION

The term “revenue bond” as used in Charter sections 90.1 and 90.2 has a narrow, particular meaning, not the broad, general meaning set forth in various state laws. As used in the Charter sections, the term means traditional bonds; negotiable certificates, with coupon, purchased through public competitive bidding and evidencing a particular form of debt. Accordingly, the Charter sections are not applicable to a loan contract, such as the SRF Standard Contract, and the City may enter into such contracts without a vote of the electorate, provided all

other provisions of the Charter are satisfied, and the contracts are written so as to avoid general constitutional and Charter debt limitations.

submitted,

Respectfully

CASEY GWINN
City Attorney

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Attachments A-F
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