

MEMORANDUM OF LAW

DATE: May 6, 1986

TO: Tom Meade, Engineering & Development
Department
FROM: City Attorney
SUBJECT: Use of Gas Tax Funds

In your memorandum of April 2, 1986 you asked if gas tax funds could be used to pay a portion of the cost of improving a street or alley under 1911 Act Assessment District Proceedings if they were in the form of a general contribution to the assessment district?

The term "gas tax" is a common name for the Motor Vehicle Fuel Fund. According to section 9303 of the Revenue and Taxation Code, all proceeds of the Motor Vehicle Fuel Fund are transferred to the Highway Users Tax Fund. The allowable uses for the Highway Users Tax Fund are set forth in Article XIX of the California Constitution and section 2100 et seq. of the Streets and Highways Code. The provisions of Streets and Highways Code section 2101(a) allow for the appropriation of funds for construction of public streets and highways. Specifically, section 2101(a) permits expenditures for:

- (a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for non-motorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

Since the contributions to the improvement district would be used to improve a public right-of-way, it would be proper.

Your second question was whether the City could utilize gas tax funds to pay the assessments for low/moderate-income property owners who are owner-occupants of the parcel being assessed.

Gas tax funds can only be spent for those items specifically authorized by the enabling legislation. 57 Op. Att'y Gen. 142 (1975). Section 2101 does not list the payments you have proposed as one of authorized activities for the expenditure of gas tax funds. The California Constitution authorizes payments on bonds only under certain situations. Article XIX, section 5

of the California Constitution specifically provides that the legislature may authorize the use of these funds for the payment of principal and interest on voter approved bonds. Under 1911 Act proceedings the bonds are not voter approved.

Therefore, we believe that the use of Gas Tax Funds for the payment of assessments for low/moderate income property owners participating in the City's 1911 Act Improvement Districts would be improper.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

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