

MEMORANDUM OF LAW

DATE: June 6, 1986

TO: R. David Flesh, Supervising Economist
FROM: City Attorney
SUBJECT: Sales Tax Increment Financing and the Gann
Limit

This is memorandum of law number eight (8) responding to questions raised by the "Gann Limit" and your memorandum to us of May 28, 1986 on the above-captioned subject, a copy of which is attached as Enclosure (1).

You ask whether sales tax financing used to support a redevelopment project may be excluded from the City's Gann Limit. The answer is yes if certain provisions of State law are utilized.

Pursuant to Revenue and Taxation Code Section 7202.6, the exercise of the taxing power implemented pursuant to the statute is deemed to be a transfer of financial responsibility from the City to the City Redevelopment Agency within the meaning of Section 3(a) of Article XIII B of the California Constitution (Gann Limit). This statutory exception was held valid in a 1985 decision of the California State Supreme Court in *Huntington Park Redevelopment Agency v. Martin*, 38 Cal.3d 100 (1985).

You also ask whether the fact that some of the sales tax generated by the project is proposed to be used directly by the City to pay for public improvements related to the project is sufficient reason to increase the City's Gann Limit on some theory of mandated program or increased service. The answer is no on both theories. We see no relevance to the proposed use and any exceptions to the Limit as provided in Article XIII B.

Incidentally, your memorandum seems to imply that the concept of sales tax financing for redevelopment projects is based upon an "incremental" sales tax increase such as used in the property tax increment financing provided for by the Community Redevelopment Law (Health and Safety Code Sections 33670, et seq.).

You should know that the concept embodied in the State law that would allow allocation of sales tax to redevelopment projects under certain circumstances does not truly deal with the "increment" to the sales tax which results from the project, but in effect provides for the substitution of a Redevelopment Agency sales tax of 1% in lieu of the City's 1% local sales tax. In other words action taken in accordance with the provisions of

Revenue and Taxation Code Section 7200, et seq. means that all local sales taxes generated by the project go to the Redevelopment Agency.

For additional information on this subject, we invite your attention to those specific provisions of the Revenue and Taxation Code.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

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Enclosure (1)

ML-86-65