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LEGAL OPINION THAT MEASURE D IS NOT APPLICABLE TO FUNDING CONSTRUCTION OR ACQUISITION OF CITY OFFICES

Issue

A proposal has been made to study the costs and other implications of constructing new City administrative offices on property currently owned by the City in the downtown area. Alternatively, the City is exploring the desirability and feasibility of acquiring existing structures for the same purpose. It is proposed that financing for the acquisition or construction of new City offices would, primarily, come from funds that the City's redevelopment agency (Agency) would pay to the City to repay a series of loans that the City has made to the Agency from the City's general fund. To generate the funds necessary to pay the City back for these loaned amounts, the Agency would be required to issue bonds and the proceeds from those bonds would be paid over to the City.

A question has arisen as to whether Measure D, adopted by the voters of the City in 1987, applies to the City's use of these funds to construct or acquire the proposed new City offices.

Discussion and Analysis

A. The Intent and Terms of Measure D

Measure D was enacted by the voters in 1987 and is codified as Section 2-26 of the Municipal Code. According to the recitals in Measure D, the impetus for this voter initiative came from a plan then suggested by the City to acquire property for use as a new civic center. According to Measure D, the City planned to finance the acquisition of the property utilizing a "lease back" financing mechanism through which the City would enter into a long term lease of the property with a third party for a designated rent amount. The lease payments would be credited towards the cost of the property so that at the end of the lease term the City would own the property. Measure D states: "This financing method disguises purchase installments as `rent' and effectively prevents the voters from exercising their constitutional right to approve or disapprove of long-term obligations incurred for acquiring, constructing or altering public facilities."

The intention behind Measure D, then, was to require a vote of the electorate before the City utilized the long term financing mechanisms specified in Measure D for the acquisition or construction of public facilities.

The specific types of long term transactions which Measure D subjects to voter approval are described in Section 1 of Measure D. That section states that a vote shall be required for all leases and transactions through which the City "obtains the use of real property if all of the following factors are present.":

1. The fair market value of the property exceeds $1 million (this amount is indexed to the CPI); and

2. The lease or other mechanism used to finance the transaction will continue for more than four years; and

3. Upon completion of the term of the lease or termination of the transaction, title to the property will vest in the City without the City paying the then fair market value of the property.

B. <u>The Current Proposal to Purchase or Construct Facilities Using City Funds</u>

Under the current proposal to build or buy new City offices, the money the City would be using for such purposes would, in part, be general fund revenues paid back to the City by the Agency pursuant to the terms of loan agreements entered between the City and Agency. Under those loan agreements, the funds paid back to the City are to be used to reimburse the City's general fund and need not be spent on any particular expenditure. Nor are they precluded from being spent on any item that may be paid for out of general fund revenues. They can be used for any purpose for which general fund revenues may be lawfully expended. The fact that the Agency may issue bonds to generate the monies it owes to the City's general fund is not relevant. The Agency is not governed by Measure D, the City is. Moreover, the Agency is not using such bond proceeds to acquire, alter or construct any facilities. Rather, those proceeds are to be used to discharge its loan obligations owed to the City.

Moreover, the current proposal to build or buy new City offices envisions no long-term financing or other transaction which will last more than four years, at the end of which, title to the property will vest in the City. If the City constructs new City offices, it will do so on property that it owns and which it has the right to use. The cost of construction will be paid in cash, out of the City's general fund.

If an existing structure is acquired, it is not contemplated that any financing mechanism will be utilized to consummate that acquisition. Again, it is envisioned that the purchase price will be paid in cash, out of the general fund, upon which payment, the City will immediately own the property and the building(s) located on it. Since the City will be using cash resources to purchase and/or build on the property the City intends to utilize for administrative offices and since the City either (i) already owns the property to be used for constructing the new office or (ii) upon paying the already-built-upon property's purchase price, will immediately own the structure(s) to be used for City offices, by its terms, Measure D is not applicable.

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