MEMORANDUM OF LAW

DATE: April 28, 1992

TO: Phil Phillips, Auditor's Office
FROM: City Attorney
SUBJECT: City Jail - Attached Memorandum Issues 1, 2 and 3

You asked for my comments on issues 1, 2 and 3 in the attached memorandum (Attachment 1). The first issue is:

Issue 1. Does the Misdemeanor Pre-arraignment Detention Facility comply with local, State and Federal construction codes and standards?

I requested information from the Police Department regarding the inspection process utilized for the construction of the City jail. Attached as Attachment 2 is a description of the process. It appears from the attached memorandum that the plans and specifications for the jail have been reviewed and approved by the State Bureau of Corrections, the State Fire Marshal, and an architect for the County Department of General Services.

The plans for the modular buildings were not approved by the State Bureau of Corrections but were approved by the State Fire Marshal, as well as the county architect and a structural engineer from City engineering. Also, the modular buildings were required to meet state standards in obtaining a Certificate of Compliance before they left the factory.

With the limited knowledge available to me, it appears the jail and the modular buildings probably comply with applicable regulations. However, if you have any real basis for suspecting that additional inspections are necessary or appropriate, this office will work with the Building Inspection Department to review the matter in greater depth.

With regard to liability, there does not appear to be any significant liability issue in view of the multiple reviews and the inspection process described above.

The second issue is:

Issue 2. Does the language in the Certificates of Participation allow for the transfer of funds between the construction, start-up, furniture, fixtures and equipment and contingency budgets?

A review of the documents which were prepared in connection with the Certificates of Participation indicates that the Project Construction Fund was to be expended in accordance with the "Estimated Sources and Use of Funds" which estimates were included on page 10 of

the Offering Circular. Nowhere in the documents do I see any specific breakdown of the "construction" elements. The documents consistently merely refer to the use of the funds for "construction." This office, to my knowledge, was not asked for comments as to what constitutes "construction" for which proceeds from the Certificates could be used. It appears, prior to issuance of the Certificates, it was determined by City staff and Wackenhut that "construction" costs include not only actual hard costs for contracted construction of the buildings, but also "start-up costs" and the costs of initial furnishing including fixtures and equipment.

As a practical matter, and in the absence of any information to the contrary, it seems that construction of a jail should and may logically include initial furnishings, fixtures and equipment. The expenditures for "start-up costs" are slightly more difficult to fit into the normal meaning of construction. "Start-up costs," as noted in Attachment 3, include costs of special training for the personnel who are to operate the jail together with necessary salaries prior to commencing operations and costs of temporary office space to house the employees. However, the concept of Wackenhut as well as the Police Department, in sizing the Certificates issue, apparently included budgeted amounts for start-up costs.

Assuming that start up costs are, under the circumstances, a valid use of the proceeds from the Certificates, and based upon the fact that specific line items for start-up costs, furnishings, fixtures and equipment, were not included in any of the documents relating to the sale of the Certificates, it follows that if we came in under budget for furnishings, fixtures and equipment, and slightly over budget for start-up costs, it is reasonable to transfer the excess to pay for the slightly increased start-up costs.

The third issue is as follows:

Issue 3. Can furniture, fixtures and equipment paid for from the proceeds from the Certificates of Participation be located and utilized at a facility other than the Misdemeanor Pre-arraignment Detention Facility?

Attachment 4 describes the "off-site equipment" to be paid for from the proceeds of sale of the Certificates of Participation. A substantial amount of the electronic equipment being installed in the new City jail requires the installation of equivalent electronic equipment at other sites in order to function properly. It appears logical and reasonable to allow the utilization of a portion of the proceeds for such compatible off-site electronic equipment.

Most of the items described in Attachment 3 would appear to qualify for funding based upon the fact that the equipment is necessary in order to be able to utilize the electronic equipment installed at the new jail. However, it is questionable as to whether the proceeds of the

Certificates should be used for a new "sally port" at the police headquarters building. Likewise, questionable are expenditure for a "new secure area" and "new gun lockers" for police headquarters.

SUMMARY

In summary, based upon limited information given to me it appears that the new jail improvements have been built to applicable statutory standards. The Building Inspection Department could best be utilized to review and reach conclusions on this issue if additional review is required.

On the issue of expenditures and transfers for start-up costs, the documents involved with the Certificates of Participation do not specifically provide for such expenditures, but there is considerable logic in allowing such expenditures so that the facility can open for operation at the designated time without the need for delays in order to train personnel. Also, it appears rather late in the process to be questioning this expenditure. Assuming the expenditure for start up costs is appropriate, the transfer of excess funds from furniture, fixtures and equipment to provide for start up costs slightly in excess of budgeted amounts is likewise appropriate.

Expenditures for "off-site" equipment and improvements needed to support "on-site" electronic equipment seems legally appropriate. The "sally port" and other capital improvements off-site appear to me to be stretching the issue but there is, to my knowledge, no statutory provision or judicial determination to decide the issue with certainty either way.

While off-site equipment could, at least theoretically, continue to be security for the Certificates, the concept of spending proceeds from the Certificates sale for off-site capital improvements to the police headquarters building is questionable.

JOHN W. WITT, City Attorney
By
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Attachments 4
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