MEMORANDUM OF LAW

DATE: February 8, 1989

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: Dedicated Public Parks - Weekly Church Services in "Public Meeting Room"

By memorandum dated November 17, 1988, copy attached, you described a situation where the City has required its lessees to evict park subtenants who were conducting weekly religious services in park buildings. Your memorandum indicated that one of the Mission Bay hotel lessees has entered into such an agreement with a church allowing the church to conduct weekly services in a "public meeting room" area of the hotel. We understand the agreement has a six-month term. The hotel operator was notified of our conclusion that such a use was not a proper park use and the sublessee (church) has reportedly discussed the issue with its attorney who apparently disagrees with our view. You asked that we prepare a memorandum of law on the subject.

As you know, religious speech is protected by the state and federal constitutions and must be allowed, subject to certain limited conditions, in public parks and other public places.

This office recently prepared a rather extensive opinion relating to the legality of allowing a creche and other religious scenes as part of the Christmas displays in Balboa Park. As you know, we concluded that the creche and religious scenes were allowable on condition that the City may not expend any of its funds for maintenance or upkeep, that the structures could not be stored in the park and that the religious scenes must be part of a broader group of facilities celebrating the holiday season.

In addition, there are numerous cases upholding citizens' rights to freely express their religious views within open areas of public parks. Hague v. C.I.O., 307 U.S. 496 (1939); Dillon v. Municipal Court, 4 Cal.3d 860 (1971). Likewise, there are numerous decisions which indicate that when public buildings are available to the general public for meeting purposes, a City may not discriminate against any individual or group wishing to utilize such facilities, on the basis of the religious or political philosophy of such individual or group. In re Hoffman, Cal.2d 845 (1967); Parr v. Municipal Court, 3 Cal.3d 861 (1971); Fowler v. Rhode Island, 345 U.S. 67 (1953); O'Hair v. Andrus, 613

F.2d 931 (1979).

It would, therefore, appear that church services in a public building should be allowed, at least where the facility to be used is open to the public at a specified rent and the church pays the same amount of rent required from any other user.

Our problem results from the long term use of a park building for weekly religious services by one particular religious organization. While there are no reported judicial decisions directly on point, we feel, for example, that the City could not lease a park building for a term of fifty years to a religious organization for development and use for religious services. This conclusion is based upon our feeling that a church, as distinguished from persons exercising their free speech rights, is not a "park use."

We realize that the fact situation in question is reportedly a six-month lease for one day a week exclusive use for church services. While our fact situation presents a closer legal case than a proposal to actually build and operate a church in a park, it is felt that allowing for the conducting of church services by a particular religious organization on a continuing and regular basis is not a proper "park use." As you know, Mission Bay Park has been officially dedicated to park use and, pursuant to the requirements of Charter section 55, may be used for no other purpose.

Churches can be established through acquisition of conditional use permits in various areas of the City and are not, we feel, generally considered park and recreation oriented.

We feel that leasing a building in a park to a particular religious denomination for regular weekly religious services would not be a "visitor oriented" park facility but would rather cater to an established religious congregation. Therefore, our conclusion is that the particular lease in question does not represent a valid public park use.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

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Attachment
ML-89-13