



DENNIS J. HERRERA
City Attorney

MICHAEL MARTIN
Deputy City Attorney

DIRECT DIAL: (415) 554-4648
E-MAIL: michael.martin@sfgov.org

MEMORANDUM

TO: Honorable Members, Board of Supervisors
CC: Honorable Members, Library Commission

FROM: Michael Martin
Deputy City Attorney

DATE: January 10, 2006

RE: Bernal Heights Branch Library Expansion

Question

In this memorandum we respond to your Resolution No. 883-05. In that Resolution you asked our office to review the Branch Library Improvement General Obligation Bond authorization, approved by the voters in November 2000, to determine whether the City may use proceeds of the Branch Library Improvement General Obligation Bonds (the "Bonds") to renovate and possibly expand the Bernal Heights Branch Library building for a mixed-use occupancy by the Bernal Heights Branch Library and the Bernal Preschool. Specifically, we understand your inquiry to be whether proceeds of the Bonds may be used to pay for the entire building upgrade and expansion with the Bernal Preschool paying only for improvements to the portion of the renovated building to be dedicated to the Preschool's own use.

Short Answer

Proceeds of the Bonds may only be used to construct facilities for library use. General improvements (e.g. seismic strengthening) to a mixed-use building housing a library along with other space exclusively dedicated to non-library uses may only be financed with Bond funds in an amount proportional to the library space within the building relative to the total building space. We are not aware of any evidence that the Preschool would further a library purpose, but if there is any such evidence we could reconsider this advice in light of such facts.

Background

The Bernal Preschool is a state early childhood education program administered by the City College of San Francisco. The Preschool has occupied, without a lease or reimbursement to the City, certain building space in the lower level of the Bernal Heights Branch Library building for more than a decade.

As part of the Branch Library Renovation Program, the Bernal Heights Branch Library building will undergo extensive seismic, mechanical, disability access, operational and public

Memorandum

TO: Honorable Members, Board of Supervisors
DATE: January 10, 2006
PAGE: 2
RE: Bernal Heights Branch Library Expansion

service upgrades, and possible expansion. The Branch Library improvements are currently programmed to be financed from Bond funds.

We understand that the Preschool wishes to occupy space for its own exclusive use in the upgraded building. The Preschool has offered to pay for tenant improvements to the area that the Preschool proposes to occupy in the upgraded building. We further understand that City College has made arrangements to permanently relocate the preschool to a nearby school (Paul Revere Elementary School).

Analysis

California courts have held that the lawful use of bond funds is governed by the language of the ballot question and the ordinance placing the measure onto the ballot. See, e.g., *Associated Students of North Peralta College v. Board of Trustees of the Peralta Community College Dist.* 92 Cal.App.3d 672, 677 (1979). The ballot question for the Bonds reads as follows: "Shall the City incur \$105,865,000 of bonded indebtedness for the acquisition, renovation, and construction of branch libraries and other library facilities, other than the Main Library, and all other works, property, and structures necessary or convenient for the foregoing purposes?" The ballot ordinance submitting this question to the voters did not contain any provisions amplifying or broadening the meaning of the phrase "branch libraries and other library facilities" to apply to school facilities or other mixed uses. After consultation with outside bond counsel for the Bonds we agree that the voter authorization is properly understood to be confined to facilities used for library purposes.

Based on that analysis, proceeds of the Bonds may only be used to improve library facilities. Therefore, these Bond funds may not be used for improvements or renovations to any portion of the Bernal Heights Branch Library building that would be dedicated to a non-library use like the Preschool. Further, the project costs that benefit the building as whole must be apportioned based on the relative building space occupied for library use and for non-library use.

Accordingly, Bond funds may only be used to finance the Branch Library's proportional share of the project costs applicable to the building as a whole and improvements or renovations to the space used for library purposes. If the building is renovated for a mix of uses including non-library purposes, such as the Preschool, then non-Bond funds must be provided to finance the cost of the proportional share of common building improvements as described above. Therefore, the proposal described in Resolution 883-05 would not be a lawful use of Bond funds.

This analysis is limited to the use of Bond funds as currently programmed for the Bernal Heights Branch Library expansion. The City may be able to use other City funds to finance the renovation of the Bernal Preschool space so long as such expenditure serves a public purpose and complies with any restrictions applicable to the particular proposed funding source.

cc: Luis Herrera, City Librarian