



San Diego Unified School District

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[VIA EMAIL ONLY]

DATE: June 8, 2009

TO: Stu Markey, Executive Director
2008 Capital Improvement Bond Program

FROM: Sandra T.M. Chong, Assistant General Counsel

SUBJECT: Use of Proposition S funds relating central library/high school initiative

This confirms that the proposed public high school occupying two high-rise floors of the future downtown public library in the City of San Diego is a Proposition S project and, hence, a permissible use of Proposition S funds.

The Proposition S ballot measure contains language under the heading "Additional Projects" that states, "Provide matching funds to construct classrooms and schools in the downtown area to meet educational needs of the district." The ballot measure does not specify the dollar amount, but our understanding is that District has allocated \$20 million under Proposition S for this purpose.

Under the heading "Bond Authorization" of the Proposition S ballot measure, the text expressly states (emphasis added), "Proceeds for the sale of bonds authorized by this proposition shall only be used for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of schools, or *the acquisition or lease of real property for school facilities, . . .*" In addition, under the heading "Additional Projects" of the ballot measure, it states that costs incidental to and necessary for the completion of the listed Bond projects include, "Acquisition of any of the facilities on the Bond Project List through temporary lease or lease-purchase arrangements, or execute purchase option under a lease for any of these authorized facilities";

Proposition S also permits "joint use." Under the heading "Further Specifications" of the ballot measure, the text states, "The District may enter into agreements with the City of San Diego, County of San Diego, or other public agencies or nonprofit organizations for joint use of school facilities financed with the proceeds of the bondsThe District may seek State grant funds for eligible joint-use projects . . ."

Education Code sections 47610 and 47610.5 exempt a charter school facility from the requirements of the Field Act (Education Code sections 17280-17317; 17365-17374) if that facility complies with California Building Code (CBC) standards or is exclusively

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owned or controlled by an entity that is not subject to CBC such as the federal government. Here, a charter high school located in a downtown library would need to comply with CBC.

The vote requirement for construction of a school, which is a public works project that must be competitively bid under Public Contract Code section 20111, is a simple majority (3-2).

The vote requirement for the District (as tenant) to lease land from the City of San Diego (as landlord) is also a simple majority (3-2). The supermajority vote involving real property does not apply because the District does not own the real property.

Please advise if you have further questions.

STMC:bcr

c: Mark Bresee, Terry Grier, Scott Himmelstein, Bill Kowba, Chuck Morris, Bernie Rhinerson, Drew Rowlands, Jim Watts