[MS-0398.030.015.005]

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

March 15, 1990

TO: Board of Supervisors

FROM: County Counsel

RE: Method of Creating Regional Airport Authority

We enclose a copy of our February 14, 1990 advice regarding creation of a Regional Airport Authority. Such advice discusses the joint exercise of powers approach as well as special legislation consideration. Should you have any questions concerning this subject, please contact me.

LLOYD M. HARMON, JR.
County Counsel

LMH:bf
Enc.

STOCK #75-3344

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

February 14, 1990

TO: Airport Task Force

FROM: County Counsel (A12)

RE: Method of Creating Regional Airport Authority

You have asked our office to report on the methods of creating a regional airport authority ("Authority") either by joint exercise of powers agreement (JPA) or by special legislation such as that creating the San Diego County Flood Control District or the Unified Port District. These two methods each may be used to accomplish essentially the same purpose. The following is an outline of the procedures which would be necessary to create the Authority pursuant to these methods with some comments as to the desirability of each method.

1. Joint Exercise of Powers Agreement

a. Basic Provisions of Law

California law authorizes two or more public agencies, such as a city or a county, by agreement, to jointly exercise any power common to the contracting parties (Gov.Code § 6502) [1]. It is not necessary that the power common to the contracting powers be exercisable by each contracting party with respect to the geographical area in which such powers are to be jointly exercised (§ 6502). Since both counties and cities may own and operate airports (§§ 26026, 50470), the County and one or more cities could use the provisions of the Joint Exercise of Powers Act to establish an airport authority. The Authority may be established as a separate entity whose debts are not the debts, liabilities and obligations of the parties to the agreement (§ 6507, 6508.1). The agreement establishing the Authority must, of course, set forth the powers of the Authority and its method of operation. Further, the power of the Authority is subject to the restrictions upon the manner of exercising the power which generally apply to one of the parties which must be designated in the agreement (§ 6509). The parties to the agreement may make contributions to the Authority or make advances to the Authority to be repaid as provided in the agreement. (§ 6504) The governing body of the authority may be composed exclusively of elected officials or may be made up of persons appointed to the

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[1] Hereinafter, all section references are to the Government Code unless otherwise stated.

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Authority board by the governing boards of the parties to the agreement (§ 6508). The agreement must provide for strict accountability of all funds and report of all receipts and disbursements (§ 6505). In addition, if a separate authority is created the agreement must designate the treasurer of one of the contracting parties or, in lieu thereof, the county treasurer or a certified public accountant to be the depositary and have custody of all the money of the Authority. The officer performing the functions of auditor and controller must be of the same public agency as the treasurer designated depositary except that where a certified public accountant has been designated as treasurer, the auditor of any of the contracting parties may be designated as auditor of the entity.

If the Authority is not one or more parties to the agreement but is a separate public entity, it may be authorized to make and enter into contracts, to employ agents and employees, to acquire, construct, manage, or maintain or operate any buildings, works or improvements, to acquire, hold, or dispose property, or incur debts, liabilities or obligations, and to be sued and to sue in its own name (§ 6508). These are traditionally the kinds of powers exercised by a government agency, furthermore, the agreement should specify that the Authority may exercise the power of condemnation. The Joint Exercise of Powers Act also contains a provision for the issuance of revenue bonds by a joint powers authority and one of the projects for which bonds can be issued is the operation of commercial or general aviation airports (§ 6546k).

It appears that the Burbank-Pasadena-Glendale Airport is operated under a joint exercise of powers agreement between the cities of Burbank, Pasadena, and Glendale (65 Ops. Cal.Atty.Gen. 618 (1982)).

b. Advantages and Disadvantages

Certain advantages of establishing an airport authority by joint powers agreement are: 1) it would involve only local government agencies without the need for special legislation; 2) the agreement could be tailored to meet the needs of each agency and could provide flexible conditions with regard to membership and withdrawal from membership; and 3) no further legislation is needed to authorize the issuance of bonds as that is already provided for by law and could be authorized in the joint powers agreement.

A possible negative aspect to a joint powers agreement is that the Authority must be subject to the law generally applicable to one of the members; for example, since competitive bidding laws for public works apply both to cities and counties, the Authority will be required to use competitive bidding. This would not necessarily be true in the case of a special district

established by legislation. Furthermore, the process of developing an agreement and getting it approved by the necessary public agencies could be somewhat burdensome, although getting support for legislation could be equally so. Further, under the California Tort Claims Act, the parties to the agreement may be jointly and severally liable for the negligent actions of the Authority despite the language found in Section 6508.1 (§ 395 et seq.)

2. Special Legislation

Another method of establishing the Authority would be the enactment of a special statute applicable only to San Diego County forming the Authority. Examples of this type of legislation are the San Diego County Flood Control District Act (West's Water Code Appendix 105) and the San Diego Unified Port District Act (West's Harbor Navigation Code Appendix 1). The legislation would need to provide the authority with the same powers as would be granted by agreement to a joint powers Authority, that is, the power to sue and be sued, to own and operate airports, to hire staff, to contract, to acquire property, and to issue bonds or to use other methods of financing. The legislation would also have to provide for the composition of the governing board.

An advantage of legislation is that theoretically, it can be adopted by the Legislature without agreement of any of the local agencies involved, although, as a practical matter we understand this would be very difficult. Further, any liability would lie solely with the Authority. However, with legislation it would be necessary to have the statute amended should changes be needed, whereas a joint powers agreement can be amended by the agreement of all of the parties to the agreement.

If you have any questions, please contact the undersigned at (Loc.Code 730) 531-5848.

LLOYD M. HARMON, JR., County Counsel

By William Dean Smith

WILLIAM DEAN SMITH, Deputy

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