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Legal Opinion book?
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April 14, 2004

To: Timothy Abbazia, Chairperson
Board of Finance

From: Burt Rosenberg
Asst. Corporation Counsel *BR*

Re: Board of Finance Vote on WPCA Budget

Director of Legal Affairs Tom Cassone asked me to respond to the issue of whether the Board of Finance's 3-3 vote on the WPCA budget constitutes approval of that budget.

There are the two operative provisions of the Charter and Code:

Sec. 200-31. Budget review and approval.

The annual budget of the WPCA shall be prepared and approved by the WPCA Board of Directors and shall require the additional approval of the Board of Finance and the Board of Representatives in accordance with the schedule of the annual budget of the city. In the event that either the Board of Finance or the Board of Representatives rejects the WPCA proposed budget, the WPCA may modify and resubmit said budget until it is approved.

Sec. C8-30-5. Budget Approval by the Board of Finance.

The Board of Finance may approve, reject or lower any item in the budget for the next ensuing fiscal year except as provided under Sec. C8-30-2(b)(6) and shall, on or before the twentieth day of April, transmit the budget as revised by it to the Clerk of the Board of Representatives. Any item in the budget for the next ensuing fiscal year not rejected or revised by the Board of Finance shall be deemed approved by it. With respect to the Capital Projects Budget, the Board of Finance shall show the amount it proposes to raise through current taxation and the amount remaining for which bonds would be required with respect to each project. With respect to the Mayor's proposed capital projects budget

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and operating budget for the two fiscal years subsequent to the next ensuing fiscal year the Board of Finance shall, on or before the twentieth day of April, transmit its recommendations thereon to the Clerk of the Board of Representatives.

The issue, again, is what is the effect of the BOF's 3-3 vote on the WPCA budget? Under the terms of C8-30-5, "Any item in the budget for the next ensuing fiscal year not rejected or revised by the Board of Finance shall be deemed approved by it." Since a 3-3 vote is *not* a rejection, under the express language of C8-30-5, it must be considered to be an approval.

There is a potential argument that the term "any item in the budget", as used in C8-30-5, refers to the City's operating budget and does not encompass the WPCA budget. Although the WPCA budget is included within the booklet for the City's operating budget (see pages 361-382), it is listed under Special Revenue Funds, or enterprise funds, which replicate the operation of a business. The Special Revenue Fund is separate from the General Fund, which is intended to fund the budget. The position can be taken that the WPCA budget is not an "item in the [City's operating] budget, and thus is not subject to the rule set forth in C8-30-5 that an item not rejected constitutes an approval.

In my opinion, the better argument is that the term "any item in the budget" is couched in broad language, and thus should be read broadly. Moreover, it would be illogical to have one rule with respect to votes on the City's operating budget and a different, inconsistent rule with respect to votes on the WPCA budget. If the C8-30-5 rule does not apply, a tie vote would result in an anomaly that the budget was neither approved nor rejected. Lastly, it should be noted that the WPCA budget is submitted with the Mayor's budget and is part of the same review and approval process as the Mayor's budget.

Based upon the foregoing facts and analysis, it is my opinion that the 3-3 vote of the BOF on the WPCA budget constitutes an approval of that budget.

c.c.: Thomas M. Cassone, Director of Legal Affairs
Sybil V. Richards, Deputy Corporation Counsel

Cassone, Thomas

From: Rosenberg, Burt
Sent: Wednesday, April 14, 2004 10:04 AM
To: Cassone, Thomas
Subject: Board of Finance - Approval of WPCA Budget

Tim Abbazia (323-9764) called this morning re the above matter. I told him the content of my memo of 4-13-04 to you (attached), but told him that under the terms of the Charter, the decision has to come from you. If you need anything further, please let me know. Thanks. Burt



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