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MEMORANDUM

TO: Luis Herrera
City Librarian

FROM: Amy S. Ackerman
Deputy City Attorney

DATE: August 3, 2005

RE: The Authority of the Public Library to Name Its Buildings or Facilities Within Its Buildings

Question Presented:

Does the San Francisco Public Library Commission (the "Library Commission" or "Commission") have the authority to name Branch Libraries or rooms or other facilities within Library Buildings after an individual?

Short Answer:

I. Naming Buildings

As described more fully below, the 1996 Charter does not give the Commission authority over the property its department occupies. Because the Commission does not have this authority, the Commission may not name Branch Libraries or other Library Buildings, themselves. The Charter requires the Director of the Department of Administrative Services ("Director of DAS" or the "Director") to manage all public buildings, facilities and real estate of the City and County not otherwise provided for in the Charter. The Charter's delegation of power to the Director of DAS to manage those buildings includes naming buildings. The Charter does not otherwise provide for managing Library Buildings. Accordingly, the Director of DAS has the authority under the Director's general power to name Library Buildings after a person. But, the Director's power is not exclusive. The Board of Supervisors ("Board") could adopt an ordinance superseding any such decision by the Director. Alternatively, the Commission could request that the Board select a specific name for a particular Library Building.

II. Naming Rooms Or Other Facilities Within Library Buildings

The Commission may name facilities, including rooms, within its buildings after individuals, including donors, subject to the Board's authority to adopt an ordinance superseding the Commission's decision. The Charter authorizes a department head to administer and manage the department, which includes exercising the control and management over the department's use of the space that is allocated to it. This authority is subject to the Commission's approval and the ability of the Board to adopt an ordinance superseding any decision by ordinance.¹ Finally,

¹ In addition, the Board may be required to approve the naming of a facility when the department is doing so in connection with the acceptance of a gift from a private donor. Except

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as explained below, the Library's historical power to "provide memorial tablets and niches to perpetuate the memories of those persons who may make valuable donations to any such library" carries forward to the present Commission.

Background:

The San Francisco Charter does not explicitly address which office or agency within the City and County of San Francisco has the authority to name City buildings or facilities or rooms in City buildings. City commissions, such as the Library Commission, may wish to name facilities within the space that their departments' occupy to recognize private donors to the City or to honor exceptional citizens.

Charter section 1.101 provides that "[a]ll rights and powers of a city and county which are not vested in another officer or entity by this Charter shall be exercised by the Board of Supervisors." This "reserve power" of the Board includes the naming of City streets and buildings on public property. (City Attorney Opinion 78-6 [concluding that under the reserve power the Board was authorized to change the name of Polk Hall or Larkin Hall].)

The Board's reserve power to name City buildings does not extend to all of the City's public property. As explained more fully below, where overriding state law, the provisions of a trust, or the Charter gives control over property to a commission, that commission may exercise the power to name a building over which it has control. (City Attorney Opinion 78-6.) Unless the Charter gives the commission exclusive control over the property, however, the Board may be empowered to supersede that commission's decision by adopting an ordinance naming the building.

Neither the Charter nor the Municipal Code contains an express test to determine which of the City's commissions hold the power to exercise naming rights. In 1978, this Office considered who was authorized to change the name of the Exposition Auditorium, now referred to as the Bill Graham Civic Auditorium, and the Halls within that facility. (City Attorney Opinion 78-6.) At the time, the prior Charter charged the Department of Real Estate with the control, management and leasing of the Auditorium. (Former §3.510.) Former section 7.400 gave to the Director of Property the charge of the management of the Auditorium. We concluded that the Charter's delegation of the power over "control and management" of the Auditorium was insufficient to override the Board's reserve power to exercise naming rights.²

In the 1978 Opinion, we contrasted then sections 3.510 and 7.400 with then section 3.552. Section 3.552 gave to the Recreation and Parks Commission "the complete and exclusive control, management and direction of the parks, playgrounds, recreation center and all other

where the Charter provides otherwise, the Board of Supervisors must approve all gifts to the City in excess of \$10,000. (S.F. Admin. Code § 10.100-305.)

² The Opinion also concluded that changing the name of the Auditorium would violate the conditions upon which the City received the gift of the building.

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recreation facilities, squares, avenues and grounds which are in charge of the commission.”³ We concluded that “[t]he vesting of ‘complete and exclusive control’ in the Commission by the People would include the power to name or rename facilities under the jurisdiction of the Recreation and Park Commission.” (City Attorney Opinion 78-6.)

In a 1975 Opinion, this Office concluded that the Library Commission was authorized to name public libraries after private citizens. (City Attorney Opinion 75-27.) This brief Opinion based its conclusion on three factors: (1) then section 3.500(a), which authorized commissions to prescribe rules and regulations “for the conduct of the affairs, for the distribution and performance of its business, for the conduct and government of its officers and employees, and for the administration, custody and protection of property under its control”; (2) then section 3.560, placing management of the library department under the Library Commission; and (3) the specifically enumerated power of the Library Commission under prior City Charters to provide memorial tablets and niches to honor donors.⁴ (*Ibid.*)

The 1978 and 1975 opinions appear to reach different conclusions regarding the extent to which the Charter’s delegation of control and management over property to a commission or department authorizes that entity to name buildings it manages. In subsequent non-published opinions, this Office consistently advised that where the Charter expressly gives a commission control over the property within its jurisdiction, that commission may name buildings on that property. We now consider the authority of the Library Commission, under the City’s current Charter, to name a building or facilities within the building.

Analysis**I. NAMING BUILDINGS**

The 1996 Charter made many significant changes to the division of powers among the branches of the City. Most pertinent here is the change to the Board’s power over the City’s administrative affairs. Section 2.114 empowers the Board to adopt legislation relating to administrative matters, subject to two exceptions. The Board may not take any action or enact any legislation affecting (1) specific contract and (2) personnel decisions. (*Ibid.*)⁵ The power to take action relating to administrative affairs allows the Board to overrule certain actions by City boards and commissions.

³ The current Charter provision regarding the Recreation and Parks Commission is different. (See §4.113.)

⁴ See the next section of this memorandum for more information on this history.

⁵ Under the former Charter, the Board was prohibited from adopting legislation or taking action relating to administrative affairs. (Former §2.401.)

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A. The Charter Delegates Three Levels of Power to Commissions

The 1996 Charter also delegates varying degrees of power to different commissions. Essentially, there are three levels of delegation. First, the Charter gives a small number of commissions “exclusive charge” over the property and assets under their jurisdiction. (See §5.101 [giving charitable trust departments “exclusive charge of the trusts and all other assets under their jurisdiction . . . including any land or buildings set aside for their use”]⁶; §8A.102(b) [giving the Municipal Transportation Agency the “exclusive charge of the construction, management, supervision, maintenance, extension, operation, use and control of all property, as well as the real, personal, and financial assets of the Municipal Railway”]; §8B.121 [giving the Public Utilities Commission “exclusive charge of . . . the real, personal and financial assets, that are under the Commission’s jurisdiction].)⁷

The Charter gives a second group of City agencies control, management and charge over the property and assets under their jurisdiction, but not *exclusive* control, management and charge. (See §4.110 [Health Commission and Department shall “manage and control the City and County hospitals . . .”]; §4.113 [Recreation and Park Department “shall manage and direct all parks, playgrounds, recreation centers and all other recreation facilities, avenues and grounds under the Commission’s control”]; §4.115 [Airport Commission shall have “charge of the construction, management, supervision, maintenance, extension, operation, use and control of all property, as well s the real, personal and financial assets which are under the Commission’s jurisdiction”]; §4.129 [Director of Department of Administrative Services “shall manage all public buildings, facilities and real estate of the City and County, unless otherwise provided for in this Charter”]; §5.103 [Arts Commission shall “assure that the City and County-owned community cultural centers remain open, accessible and vital contributors to the cultural life of the City and County”].)

The Charter gives a final group of agencies, the majority of City departments and commissions, no express grant of control over the property and assets they use or occupy. (See, e.g., §4.109 [Police Commission]; §4.128 [Fire Commission]; §8.102 [Library Commission].)

B. The Right To Name A Building Depends Upon The Degree Of Control The Department Has Under The Charter

Thus, under the 1996 Charter, whether a Commission may exercise naming rights depends upon the degree of control the Charter gives it over the property and assets under its jurisdiction. Stated differently, the degree of control dictates whether the commission or official, rather than the Board under its reserve power, may name a City building or facilities within a

⁶ The charitable trust departments are the Asian Art Museum, the Fine Arts Museums, and the War Memorial and Performing Arts Center. (§5.101.)

⁷ Although the Charter does not expressly provide that the Port Commission has *exclusive* jurisdiction over the property under its control and management, the state law that transferred the property to the City does so. (Burton Act, Stats. 1968, ch. 1333, §3.)

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building. It also determines whether any naming decision is subject to the Board's power under Charter section 2.114 to overrule or limit the selection of names.

1. Exclusive Charge Departments Have The Exclusive Right to Name Buildings Under Their Jurisdiction

We first consider those commissions with "exclusive charge" over property and assets. In Opinion No. 2003-03, we discussed the meaning of "exclusive charge" in Charter section 8B.121(a), the recently enacted charter provision governing the Public Utilities Commission ("PUC").⁸ In that opinion, we concluded that, "[t]he 'exclusive charge' language in section 8B.121(a) places the PUC beyond the Board of Supervisors' authority to adopt legislation dictating administrative matters for individuals departments. The Board no longer has jurisdiction to enact ordinances specific to the PUC or the City utility system."⁹ (Opinion No. 2003-03, p. 9, citation omitted.)

It follows, then, that those departments with *exclusive* charge over the property and assets under their jurisdiction are empowered to name the buildings over which they have exclusive charge. The specific provisions of the Charter that expressly delegate exclusive control to those commissions takes precedence over the Board's reserve power. Thus, they are empowered to name their buildings. The exclusive charge also places those commissions beyond the authority of the Board to adopt legislation superseding the commission's selection of a building name. Those departments have sole discretion to select the name of a building under their charge.¹⁰

2. Departments With Control, But Not Exclusive Control, May Name Buildings Subject To The Board's Decision To Supersede The Commission's Decision

We next consider those entities with control, management and charge over the property and assets under their jurisdiction, but not *exclusive* control, management and charge. Under its

⁸ Section 8B.121(a) provides, in pertinent part:

" . . . the Public Utilities Commission shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City as well as the real, personal and financial assets that are under the Commission's jurisdiction or assigned to the Commission"

⁹ We also concluded that those entities would remain subject to laws of general application. (Opinion No. 2003-03.)

¹⁰ If the Charter specifies the name of a building, the voters would be required to approve a Charter amendment to change the name. Similarly, the voters could exercise the power to name a building through their initiative power to adopt any legislative act that is within the power conferred upon any board or commission to adopt. (Art. XIV.) Finally, a commission's naming power is subject to the Board's power, as noted above, to pass ordinances of general application to all City departments.

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plain language, the Charter delegates to them the authority over the property. This express delegation of power takes precedence over the Board's reserve power, entitling the commissions to name buildings under their jurisdiction. But because these entities do not have *exclusive* control, the Board retains the authority under section 2.114 to enact legislation relating to the administrative affairs of the department. Thus, the Board could decide to enact legislation superseding or preempting a commission's selection of a name.

3. Departments Without Grants of Control May Not Name Buildings

Finally, we consider those entities without express grants of control over the property they use or occupy. Because those entities have no express Charter-conferred authority over their property, they may not name a building. As noted above, the Charter provides that the Director of the Department of Administrative Services "shall manage all public buildings, facilities and real estate of the City and County, unless otherwise provided for in this Charter." (§4.129.) Because the Charter authorizes the Director of DAS to manage those buildings, the Director may name buildings. Again, because the Director's power is not exclusive, the Board could adopt legislation superseding any decision by the Director. Alternatively, a commission or department could appeal directly to the Board to request that the Board select a specific name.

C. The Library Has No Authority To Name Its Buildings

As noted above, the 1996 Charter does not expressly give the Library Commission control over the property the City-owned property it controls or occupies. Accordingly, it may not name the Main Library or a Branch Library. It could recommend that the Director of DAS or the Board of Supervisors do so.

II. NAMING FACILITIES

We next consider whether the Library Commission may name facilities, such as meeting or conference rooms, within Library buildings.

A. Exclusive Charge Departments Have The Exclusive Right to Name Facilities Within Their Buildings

As noted above, departments with exclusive charge over their property and assets may name building within their jurisdiction. It follows then that those departments have the right to name facilities or rooms within their buildings.

B. All Other Departments May Name Facilities Within Their Buildings Subject To The Board's Ability To Override The Decision By Legislation

Departments with control, but not exclusive control, may name rooms or other facilities within City buildings that are under their departments after individuals. As described above, the Charter delegates to those departments control over their property and assets. Just as those departments may name buildings, they may name facilities within their buildings.

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Those departments without express grants of control over property they occupy may also name facilities within that space. The power the Charter delegates to the Director of DAS to manage the public buildings, facilities and real estate of the City authorizes the Director to allocate space among departments within a City building. After the Director allocates that space to a City department, the department head, authorized by the Charter to administer and manage the department, exercises the control and management over the department's use of the space. (See Charter § 4.126 [the administration and management of each department within the executive branch shall be the responsibility of the department head].) Thus, at that point, the department head is responsible for determining how to allocate and manage the space to carry out the functions of the department. Included within that management power is the authority to name facilities within the department's allocated space.¹¹

A department head's naming power is subject to the authority of the commission overseeing the department. Charter section 4.102(1) authorizes a commission to approve goals, objectives, plans and programs and to set policies for the department. This power would include the power to address policies for naming facilities within a department's building.

And, for non-exclusive charge departments, the naming power is also subject to the Board of Supervisor's authority. As noted above in Section I., the Board may adopt legislation relating to administrative matters. (Charter § 2.114.) Thus, the Board could adopt legislation that overrides a department's decision to name a facility.

Thus, the Chief Librarian may name facilities or rooms within the Library's buildings or ask the Commission to name its facilities after individuals, including donors. The Commission may override the City Librarian's naming decisions. Finally, any decision is subject to the Board's ability to adopt legislation that overrides the decision.

C. The Library's Unique Historical Powers Also Authorize It To Name Facilities Within Its Buildings

In 1878, the California Legislature enacted the Rogers Act, which authorized San Francisco and other cities to establish public libraries. The Act established that the libraries would be governed by a Board of Trustees and authorized the Board to exercise certain naming powers within the libraries: "Such Trustees, by a majority vote of all their members ... shall have the power: ... To provide memorial tablets and niches to perpetuate the memories of those persons who may make valuable donations to any such library." (Stats. 1878 ch. 266 § 5, March 18, 1878.) Thus, the state law authorized the Library Trustees to memorialize the names of donors to the library.

In 1880, the Legislature repealed and replaced the Rogers Act. (Stats. 1880 ch. 126, April 26, 1880.) The new legislation continued the powers of libraries established under the

¹¹ All department heads, including those with control and those with exclusive control, have this authority.

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Rogers Act. (*Id.* § 14.) The new Act was very similar to the Rogers Act, except without the language in the Rogers Act that was specific to San Francisco. Section Nine enumerated the powers of the Trustees, mostly unchanged from the original powers under the Rogers Act. This Act still expressly recognized the power of the Trustees to provide “donor niches”. (*Id.* § 9, Second.)

In 1900, the City adopted its first Charter. Article seven, Chapter seven, “Public Library and Reading Rooms” described the constitution and powers of the Board of Library Trustees. The provisions in section six concerning the Trustees’ powers mimicked the State enabling legislation of 1880, and expressly included the following provision:

Sec. 6. The Board...shall have power...(2) To administer any trust declared or created for such Library and Reading Rooms and branches thereof, and provide memorial tablets and niches to perpetuate the memory of those persons who may make valuable donations thereto.

Thus, the City Charter authorized the Library Trustees to memorialize donors to the Library, Branch Libraries and facilities such as reading rooms, within the Libraries. The City Charters in both 1919 and 1925 continued this language verbatim.¹²

In 1932, San Franciscans adopted a new Charter. The new Charter changed the governing body of the Library from a self-perpetuating body of “Trustees” to a Library Commission appointed by the Mayor. (1932 Charter § 43.) The new Charter section did not enumerate the powers of the Commission; nor did it include any language authorizing naming powers. But, the section did give the new Commission all the powers of the former Board of Trustees: “The library commission shall be the successors in office of the board of library trustees ... *and shall have all the powers and duties thereof*, except as in this charter otherwise provided.” (Emphasis added.) Thus, the Library Commission retained the power to name facilities within the Library.

The 1996 Charter further condensed the Library section. It merely provides that the Library Commission is part of the executive branch and the Mayor appoints its members. (Charter § 8.102.) No surviving provisions describe any specific powers of the Library

¹² In 1901, the Legislature repealed and replaced the Library Establishment Act again. (Stats. 1901 ch. 170, March 23, 1901.) This new Act changed the provisions relating to Library Trustee powers and did not include the donor niche language. As San Francisco had already enacted its charter by this time, however, the new state act had no application to it: “[T]his act shall have no application to any library established or governed by the provisions of a city charter, and the provisions of any city charter shall in no manner be affected by this act.” (*Id.* § 12.) In 1909, the state repealed and replaced the act again, but the provision concerning city charters remained. (Stats. 1909 ch 481 § 12, April 12, 1909.) All subsequent state legislation on library trustee powers has no application to libraries governed by city charters. (See Cal. Ed. Code § 18963 (2003).)

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Commission. The Charter does contain a transition provision. Section 18.101 states, in pertinent part:

To the extent the provisions of this Charter are the same in terms or in effect as provisions of the Charter of 1932, they shall be construed and applied as a continuation of those provisions.

All provisions of local law relating to or affecting the City and County in force when this Charter becomes operative are hereby repealed and superseded only to the extent they are inconsistent with the provisions of this Charter.

Under the 1996 Charter's transition provision, the Library Commission retains those powers established under the prior Charter, unless the 1996 Charter changes those provisions either expressly or by necessary implication. As described above, the 1996 Charter removed from the Library Commission the "administration, custody and protection of property under its control" and placed the management of its property under the Director of the Department of Administrative Services. Thus, the Library Commission no longer retains the power to name the Library Building or Branch Libraries.

The 1996 Charter authorizes the department head to manage and administer the Library including the space within the Library buildings. In addition, the 1996 Charter did not change the Commission's authority to administer trusts created on behalf of the Library or its facilities and to memorialize donors to the Library. That pre-existing power is subject to the Board's explicit power under Charter section 2.114 to adopt legislation relating to administrative affairs. Accordingly, the Library Commission is authorized to name rooms or facilities within the library buildings for donors, subject to the Board's ability to adopt legislation that overrides the decision.

We hope you find this information helpful. If we can provide you with any further assistance, please do not hesitate to call on us.

A.S.A.