Appendix J:

Public Gift of Funds
Legal Rebuttal
Reduction in Rental Amount Does Not Equate to a Gift of Public Funds

It continues to be our position that, because the Lease amendment will fulfill the important public purpose of allowing Winston to continue providing specialized education for students who learn differently from the traditional public school curriculum, such an amendment is not a gift of public funds. In County of Alameda v. Janssen (1940) 16 Cal.2d 276, the Court stated that “[i]t is well settled that, in determining whether an appropriation of public funds of property is to be considered a gift, the primary question is whether the funds are to be used for a ‘public’ or a ‘private’ purpose. If they are for a ‘public purpose,’ they are not a gift within the meaning of section 31 of article XVI [now art. XVI. § 6].”

The Court has refrained from defining the parameters of what qualifies as a “public purpose,” but instead has left broad discretion with the Legislature, repeatedly finding that so long as the Legislature has a “reasonable basis” for concluding that funds are being utilized for a “public purpose,” the Court will not overturn such decision. Among the broad spectrum of “public purposes” which have been upheld, one court contemplated several precedential cases before turning to the question of whether a non-profit, educational television station served a “public purpose.” In finding that it did, the Court stated “[w]e need not speculate as to how high education ranks on the scale of public value or purpose in comparison to the paving of roads, slum clearance or vivisection. We are satisfied that public educational television serves a vital public purpose. It is just possible that educational television programs might, in the long run, be of greater value than a road.” Here, Winston not only offers educational services, but it offers those services to some of society’s most vulnerable students, while also preserving the only recreational playing fields and school in the City.

Several opponents have challenged funds or credits appropriated under the “public purpose” exception by claiming that the programs in question “primarily benefit certain private parties and only indirectly aid the public.” However, as many cases have held, “[t]he benefit to the state from an expenditure for a ‘public purpose’ is in the nature of consideration and the funds expended and therefore not a gift even though private persons are benefited therefrom.” For example, in Winkelman v. City of Tiburon (1973) 32 Cal. App. 3d 834, the Court approved the below-market value sale of property by a municipality to a private non-profit corporation for the development of a mixed-income housing project in which a maximum of thirty percent (30%) of the units were reserved for low-income families based on the conclusion that the project served a public purpose and was not a gift of public funds.

Moreover, even assuming in arguendo that the requested rent reduction does not fulfill a ‘public purpose,’ charter cities – like the City – are not required to comply with the constitutional prohibition against the gift of public funds. As originally stated in Los Angeles Gas & Elec. Corp. v. City of Los Angeles (1922) 188 Cal. 307, 317, the State prohibition against gifting of public funds “has no application to a city charter. It is expressly provided by the Constitution, art. 11, § 6, that the city in its charter may make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws.” Determining what to be done with City-owned property is well within the realm of ‘municipal affairs,’ and thus, the only way the City would be subject to this restriction is if there is a similar provision in the City of Del Mar Charter.

However, there is no such restriction and the City’s charter instead expressly reserves for itself “all rights, including the right of home rule, to exercise the maximum local control allowed by the California
Constitution over local affairs." Going even further, in the Specific Recommendations section of the Environmental Management chapter of the City’s General Plan, there is a statement highlighting the “City’s intention to pursue the preservation of [open space] areas by all means available to the City, i.e., gifts or donations, cooperation with other jurisdictions, development criteria to preserve the open space sensitivities, and possible purchase.” The land in question in the Winston School contract contains the City’s last recreational fields, which Winston has agreed to maintain. The City should be doing all that it can to create a reasonable agreement with Winston so that it can realize this benefit.

This position is also underscored by the fact the City authorizes minimal rent payments from other local non-profits. Using the prohibition against the “gift of public funds” as a defense for amending the Lease here when the City has engaged in the “prohibited” activity with similarly situated entities would be arbitrary and capricious.

4. *Id.*
5. *County of Alameda*, 16 Cal.2d 276, 281.