

To: \*city council  
Cc: jims, johns, marka, daveva, larryt  
From: Dan Wilson  
Subject: Beckner meeting  
Date: 7/13/94 Time: 11:43a

I met with Larry Beckner, attorney for O.M. and Central Grand Valley Sanitation Districts yesterday. We discussed that neither of us had realistic ideas concerning how to resolve the differences between the districts and the City. He renewed his comments that the City was changing its "long-term" policy not to require powers of attorney within the special district boundaries. In our meeting he conceded that the City/Central Grand and City/O.M. contracts did not speak to this issue. His best attempt at a legal theory is that since the City/special district contract does not mention annexation (via powers of attorney) it is prohibited. He maintains this theory even in light of the specific language in the later in time City/county agreement which authorizes the City to implement its annexation policies.

He mentioned that O.M. will be sending a notice, by August 1 as required by the City/O.M. contract, that O.M. elects to start their own billing. It is the position of O.M. that once that occurs, O.M. will do the billing for both the O.M. portion as well as for the City system. i.e., there will be one billing only. The City position has been, for several years as evidenced by correspondence, that O.M. may bill for its portion but that the City will continue to bill for the system portion. Larry says the board has authorized a law suit to resolve the question of one bill v. two bills. Larry admits to being distraught enough over the last suit he filed against the City that he has told the board that he will not file the suit. He is to obtain new counsel for this purpose.

When you read this quote from the 1975 City/O.M. agreement, dealing with the billing, see if you can read it two ways.

Part of section 20 of the 1975 contract: "It is understood between the parties hereto that the District hereby reserves the right to alter or amend this agreement at any time during the term hereof by giving a written notice thereof to the City on or before August 1 of any year hereafter, said alteration or amendment to become effective January 1 of the year following, whereby the District may assume the responsibility for operation and maintenance of the District's system, billing and collecting service charges and tap fees from District users."

The District reads the last two lines as meaning that "the District's system" is one concept and "billing and collecting service charges and tap fees from District users" is another concept so that if the District gives the notice the District can collect all service charges and tap fees, including the joint system charges and fees.

The City's historical position has been that the word "District's" modifies not only "system" but also "billing and collecting" with the effect that the District can send their own bill for their own charges and fees but the City may continue to bill for the joint system charges.