

City Beach Transfer May Make Moot Suits Arising From Nudity Ordinance

By Johanna Neuman

A possible transfer of city-operated beaches to county control in Los Angeles could make academic several pending lawsuits stemming from the city's nudity ordinance.

The controversial ordinance, adopted last July 18, prohibits nudity in parks, playgrounds, beaches "or any other place under the jurisdiction of the Board of Recreation and Parks Commissioners."

But that commission, a city agency, voted last week to approve in principle a transfer of the city's beaches to county jurisdiction.

The recommended transfer, made over the strong objections of the Recreation and Parks Department staff, will be forwarded to the Recreation and Parks Committee in early October, and the committee will make a final recommendation to the city council.

In the meantime, legal experts agree that the transfer, made either through a joint powers agreement, a lease or a cooperative agreement, could have a major effect on court challenges to the nudity ordinance.

Barry Fischer, an attorney for Beachfront, U. S. A., a Venice community organization fighting the nudity ordinance in appellate court, thinks the transfer could preempt his case.

"My interpretation of the nudity ordinance is that it applies only to city-managed beaches," said Fischer. "If the ordinance is transferred to the county's jurisdiction, it could moot the whole question. There would be a cloud over these prosecutions," he said.

But Deputy City Attorney Howard Fox, who wrote an opinion recommending that any consolidation be consummated in the form of a joint powers agreement, sees no such problem.

"The nudity ordinance could be enforced by any peace officer," said Fox. "I suspect it would be much more convenient for the Los Angeles Police Department to enforce it, and I suspect that the city would want to keep control, but in any event it could all be spelled out in the agreement."

By contrast, Jim Crawford, an attorney handling the American Civil Liberties lawsuit against the nudity ordinance, feels that talk about a possible transfer of beach control "throws everything up in the air."

"If the beaches are taken out of the city's jurisdiction," said Crawford, "the ordinance would no longer apply, and our case would be

mooted."

Tom Coleman, an attorney representing Robert Opel, the man who allegedly "streaked" the city council during one debate on the nudity ordinance, feels similarly that if the beaches are no longer under the city's jurisdiction, the ordinance no longer applies.

"But the city could amend the ordinance to name only those beaches in the county to which the nudity ordinance is addressed," said Coleman, adding that negotiations on the transfer could include a discussion of how to incorporate the ordinance.

Deputy City Attorney Fox said that the matter has come up briefly in negotiations thus far, but that "they really haven't discussed the nuts and bolts yet."

The issue is further complicated by the fact that under the merger as currently proposed, the city would retain title to its beachlands as well as continued ownership of fishing piers and other facilities adjacent to beaches.

The city would also retain title to the coastline and tideland oil revenues, a fact that figured in the support for the transfer by Rosalind Wyman, a consultant hired by the mayor's office to review possible consolidation of city and county services.

"This is a simple, uncomplicated transfer," said Mrs. Wyman, who also noted that the transfer would benefit city taxpayers by spreading the tax base among a larger population.

But the genesis of the proposed merger, according to an analyst in the city administrative officer, is the consolidation of lifeguard services at the city's 13 miles of beaches and the county's 20 miles of beaches.

It is that feature of the proposal, according to the legal experts, that could present problems, since lifeguards operating as peace officers could make arrests of nude sunbathers.

In that case, assuming lifeguards are paid by the county and the city retains jurisdiction of the nudity ordinance, the arrests and the prosecutions from different governmental agencies would require another agreement.

Finally, although the city parks commission has approved in principle the proposed consolidation, opposition remains strong, and approval by the city council and county board of supervisors is not certain.

William Frederickson, Jr., general manager of the Recreation and Parks Department, has called the proposed merger "unfeasible and impracticable."

Grace Simons, chairman of a group called Citizens Committee to Save Elysian Park, opposed the plan on grounds it would be a threat to the city's parks, and has challenged the legality of the city attorney's opinion that the transfer could be effected through a joint powers agreement.

But Fox maintains that the joint powers agreement is preferable because it is the "cleanest," but not the only alternative.

"The really serious negotiations haven't begun yet," said Fox. "The effect of these things remains to be seen."