

June 21, 1995  
REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSED COUNCIL POLICY REGARDING USE  
OF CITY VEHICLES BY CITY EMPLOYEES

INTRODUCTION

You will be considering shortly the adoption of a proposed council policy which would provide guidelines for the use of City vehicles by City employees, in particular vehicles assigned on a twenty-four (24) hour basis. The proposed policy also covers the provision of specified insurance coverage to all passengers in such a vehicle, as well as the driver/City employee, in the event of an accident involving injuries.

There is no doubt that you have the authority to adopt the proposed council policy. However, we feel compelled to advise you fully as to the possible legal consequences of doing so.

DISCUSSION

As set forth in the resolution for your consideration, the City Manager has identified a need for a council policy that sets out guidelines for the use of City vehicles assigned on a twenty-four (24) hour basis. The City Manager has also identified a need to provide certain insurance coverage, for all passengers and the driver of such a vehicle, in the event of an accident involving injuries even if the vehicle is not being used on official City business.

The proposed policy provides a capped amount of medical coverage for all passengers of the vehicle. The policy also provides liability coverage for the City employee to whom the vehicle is assigned but limits the City employee's own coverage to Worker's Compensation. Finally, the policy indicates that any private insurance, obtained by the City employee to whom the vehicle is assigned, will be "accessed" in the event of a loss.

In other words, the City will seek indemnification or contribution from the employee's private insurance.

Our concern with the proposed policy is in its provision of this insurance coverage. We are concerned that the City may not be able to unilaterally limit the provision of insurance coverage in this fashion and that the City may be liable for a much broader range of damages than expected.

The California Government Code requires the defense and indemnification of public employees when acting within the "scope of

employment." Government Code Section 825. Generally, "scope of employment" and "official business" are used interchangeably. See, *Henrikson v. City of Rialto*, 20 Cal. App. 4th 1612, 1620-1622 (1993). However, the policy reasons for treating them interchangeably may fail where, as here, a specific provision is made for insurance coverage even while not on "official business." In other words, the adoption of the policy potentially makes "scope of employment" in this context broader than "official business." Here, the City Manager has acknowledged that there is a valid public purpose in the provision of vehicles on a twenty-four (24) hour basis, and thus a valid public purpose in the provision of certain insurance coverage. This is necessary so that the provision of the insurance coverage in the first instance is not seen as a "gift of public funds" to an employee who does not have their own private vehicle or is otherwise unable to obtain the required insurance coverage under California law. If, however, there is a valid public purpose in the specific provision of the vehicle on a twenty-four (24) hour basis, whether or not the vehicle is being used on official City business, the City may have difficulty in contending that an employee was not acting within the course and scope of employment anytime there is an accident involving the assigned vehicle. This means, potentially, that pursuant to Government Code section 825 the City will be liable for all damages to not only the passengers in the vehicle, but to third parties involved in the accident as well, irrespective of the conditions under which the accident occurred. In addition, although the policy purports to make privately owned insurance accessible, we are concerned that, pursuant to Government Code section 825.4, a private insurance company may successfully contend that the City's insurance coverage is primary, and no indemnification allowed, since the City has acknowledged the public purpose in providing the vehicle on a twenty-four (24) hour basis in the first place.

In sum, although the Council has the authority to adopt the proposed council policy, its adoption, and implementation, may potentially expose the City to extensive liability.

#### CONCLUSION

We believe the City Council has the authority to adopt the indicated council policy and extend the indicated insurance coverage. We are concerned, however, that the City may not be able to unilaterally limit its liability in the event of an accident even though a City vehicle is not used on official City business. We believe that you should be fully informed of this possibility when considering the adoption of the proposed council policy.

Respectfully submitted,  
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