MEMORANDUM OF LAW

DATE: September 17, 1985

TO: Jack McGrory, Acting Deputy City Manager

FROM: City Attorney

SUBJECT: Status of San Diego Regional Fire Academy Trainees Under the Fair Labor Standards Act

You have recently asked if the Fair Labor Standards Act of 1938, 29 USC Sec. 201 et seq. (FLSA) requires The City of San Diego to compensate prospective firefighters during training at the Regional Fire Academy. Based on the following analysis, we believe that the trainees sponsored by The City of San Diego at the Regional Fire Academy are not employees for the purposes of the FLSA.

The FLSA defines employee simply as "any individual employed by an employer" and it defines "employ" as "includes to suffer or permit to work." 29 USC Sec. 203(e)(1) and (g). Whether or not an individual is an "employee" within the meaning of the FLSA is

a legal determination rather than a factual one. Donovan v. American Airlines, Inc., 686 F.2d 267, 270, n.4 (5th Cir. 1982). That court established a three-part test to determine the status of trainees. That test has three criteria: (1) Does the trainee displace a regular employee, (2) Does the trainee work solely for his or her own benefit and (3) Does the employer derive any immediate benefit from the trainee's work.

In the latest case analyzing this issue, Donovan v. Trans World Airlines, Inc., 726 F.2d 415 (8th Cir. 1984), the court applied the above test and held that trainees for Trans World Airlines (TWA) were not employees even though TWA selected them and required them to reside in dormitory-like accommodations located on its Academy grounds. TWA also provided the students with meals, lodging, ground transportation, and health and accident insurance during the training period. The reasoning behind the court's decision was clear. At no time, prior to the completion of the training course, were trainees permitted to work on regular commercial flights or to supplement the work of regular flight attendants. TWA received no benefits from their efforts during the training period.

In our situation, the City-sponsored members of the present firefighter class, unlike the TWA flight attendant trainees, have

been extended conditional job offers. In analyzing the court's rationale regarding the three-part test, we believe, however, that this distinction is insignificant.

In summary, because the City-sponsored trainees do not provide any immediate benefit to The City of San Diego, or displace regular employees and are training for their own benefit, and have not been formally hired by the City, we believe that they are not "employees" under the provisions of the FLSA.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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