

MEMORANDUM OF LAW

DATE: August 25, 1988

TO: George Loveland, Park and Recreation Director
FROM: City Attorney
SUBJECT: Nissan Lifeguard Vehicles and Code 3 Response

You requested our views on the personal liability of lifeguards operating certain City lifeguard vehicles during "Code 3" emergency responses. You are concerned that the vehicles "loaned" by Nissan to the City do not qualify as "emergency vehicles" under California Vehicle Code section 165; thus, the immunity conferred under California Vehicle Code section 17004 would not apply to those public employees operating such vehicles during emergency responses.

In our view, the vehicle leasing agreement between Nissan and the City qualifies the vehicles as emergency vehicles under Vehicle Code section 165, and thus the immunity does apply. Our analysis follows:

Vehicle Code section 165 provides as follows:

165. An authorized emergency vehicle is:

. . . .

(a) Any publicly owned and operated ambulance, lifeguard or lifesaving equipment. . .

Vehicle Code section 460 provides as follows:

An "owner" is a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; the person entitled to the possession of a vehicle as the purchaser under a security agreement; or the State, or any

county, city, district, or political subdivision of the State, or the United States, when entitled to the possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 30 consecutive days or more. Emphasis added.

The preamble to the City-Nissan agreement reads as follows:

Whereas, Nissan will annually donate nineteen (19) vehicles, on a loan basis, for use by the City's Lifeguard service in exchange for rights to be the exclusive car/truck

manufacturer sponsor for all future new special events on the City's ocean beaches and for certain advertising rights during the term of this Agreement or any extensions thereof.

The agreement further states that Nissan will provide comparable new replacement vehicles annually. The City will have the exclusive right to possess and use the vehicles. Nissan may not unilaterally terminate the agreement, except upon default or breach by the City of its obligations, and may not assign the agreement without the City's consent. The agreement is for a term of five (5) years. Both Nissan and the City have certain indemnification obligations to each other, with those obligations of the City being consistent with ownership rights and obligations on the part of the City.

We conclude this agreement makes the City an "owner" within the definition of section 460 and therefore qualifies the vehicles under Vehicle Code section 165 as emergency vehicles.

However, even were the vehicles not deemed to be "authorized emergency vehicles" and the immunity under section 17004 not to apply, the provisions of Government Code section 825 more than adequately protect the public employee. Government Code section 825 provides that a municipality has a duty to defend and indemnify any present or former public employee from liability incurred while acting in the scope of employment. That section also permits indemnification of the employee for punitive damages so long as the employee acted without malice. A copy of section 825 is attached for your information.

We therefore do not feel it is necessary to seek remedial legislation to include leased or loaned vehicles operated by governmental agencies within California Vehicle Code section 165 as "authorized emergency vehicles." However, should you prefer,

you may address our legislative representative to request clarifying amendatory language to either Vehicle Code section 165 or 460.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mrh:267.1(x043.2)

Attachment

cc Jack McGrory

Dave Twomey

Terri Carroll

Chris Brewster

ML-88-81