

MEMORANDUM OF LAW

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DATE: November 27, 1989

TO: Connie Jamison, City Treasurer

FROM: City Attorney

SUBJECT: Regulation of Unlicensed Contractors Through
the Business Tax Certificate

This is in response to your memorandum of November 6, 1989 which forwarded a letter from the Painting and Decorating Contractors Association dated November 1. The association generally complains about unlicensed contractors performing services within the city and requests that the city assist in regulation of this practice. You expressed concerns associated with enforcing the state contractor's licensing law through a city tax revenue certificate.

In the past, this office has verbally opined that so long as the business tax certificate is a revenue measure rather than regulatory, you may issue a business tax certificate - even though the applicant could not conduct business in the city in violation of state law. The question now becomes whether inquiry should be made regarding the state license status of a building contractor before you issue the business tax certificate.

The City business tax certificate is not a regulatory device and does not authorize a business to operate in violation of the law or other licensing requirements. San Diego Municipal Code section 31.0120. It is a tax revenue procedure. Any regulatory aspects are governed under Business and Professions Code section 7031.5 which requires the building official, before issuing a building permit, to verify that a valid contractor's license is in effect or that the permit applicant is exempt.

Other provisions of state law govern the authority of cities to regulate or tax businesses that are subject to state licensing. Business and Professions Code section 7033 provides as follows:

Every city or city and county which requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license shall file, or have on file, with such city or city and county, a signed statement

that such licensee or applicant is licensed under the provisions of this chapter and stating that the license is in full force and effect, or, if such licensee or applicant is exempt from the provisions of this chapter, he shall furnish proof of the facts which entitle him to such exemption.

This provision is to be read in conjunction with Government Code section 37101 which provides generally that cities may license for revenue and regulation and fix license taxes upon any type of lawful business transacted within the city, and with Government Code section 37101.7 which authorizes cities to impose a revenue tax upon contractors licensed by the state.

A former Government Code section, Section 37101.2, repealed January 1, 1989, had provided that whenever a city required a license pursuant to section 37101 solely for revenue purposes and did not require the licensee to furnish verification of its state licensure, then a statement was to be conspicuously placed upon the face of the license that "the license is issued without verification that the licensee is subject to or exempt from licensing by the State of California." (Emphasis added.) This language recognized that a city was not required to actually verify the contractor's license status; and, by repealing the provisions, did not require a disclosure to appear on the license or certificate.

Your current tax certificate application form includes a space for state contractor license information. Under the provisions of Business and Professions Code section 7033, the applicant for the business tax certificate need merely provide a statement that they have a valid license or that they are exempt. Since you are not regulating the applicant, you need not inquire about the correctness of the statements made, although you could refuse to accept payment of the tax should the applicant not complete the application concerning its contractor's license status.

I trust this is responsive to your concerns, but if not, please contact the undersigned for further assistance.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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