

MEMORANDUM OF LAW

DATE: April 7, 1989

TO: Ila Ziebell, Sr. Public Information Officer,
Citizens Assistance
FROM: City Attorney
SUBJECT: Discount Coupons in City Publications

In a memorandum dated March 7, 1989, you asked this office for advice concerning the legality of including discount coupons for City attractions, such as the Space Theatre, in the quarterly water bill insert, Cityline.

There are no sections in the San Diego City Charter or San Diego Municipal Code which prohibit Citizens Assistance from including in the water bill discount coupons for cultural or recreational attractions. No question of product endorsement or advertising arises because the coupons you anticipate including would promote only City attractions. Such attractions, though private corporations, are subsidized in part by the City through Transient Occupancy Taxes (TOT). San Diego Municipal Code section 35.0101(b) provides that TOT's are "to be used for promoting the City of San Diego including the planning, construction, maintenance and operation of tourist-related cultural and recreational facilities." San Diego Municipal Code section 35.0116(A)(a) also provides that the taxes shall be used solely for the purpose of promoting the City of San Diego. The distribution of discount coupons to City attractions would promote the tourist oriented attractions of San Diego. However, by putting the discount coupons in water bills you reach only the limited audience of San Diego inhabitants. Arguably, by promoting the attractions to San Diegans tourism is also promoted by virtue of the increased knowledge San Diegans have about the attractions which are available to their visitors. However, this attenuated version of what promotes tourism may not meet the express qualifications of the Municipal Code that TOT funds be used to solely promote tourism.

Funding of the proposed project is also problematic. The attractions must bear the costs of printing the coupons as well

as the cost of any postage the additional weight of the coupons may add to the mailings. Costs may be borne by either the TOT subsidy or the corporation. Additional costs cannot be borne by the water utility fund because such actions are specifically prohibited by Section 53 of the San Diego City Charter. Section 53 provides that all water utility revenue is to be used solely

for water utility purposes. In the event there is surplus water utility revenue, it is to be transferred by the City Council to the general fund. It may then be used for any legal City purpose. There is no provision that allows some of the money to be diverted for non-water utility uses prior to the transfer to the general fund.

In summary, as long as the attractions benefitting from the distribution finance the coupon project, there is no express prohibition against distributing discount coupons. Efforts should be made to see that distribution is as widespread as possible for purposes of TOT qualifications.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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