

MEMORANDUM OF LAW

DATE: January 6, 1989

TO: Rich Snapper, Personnel Director
FROM: City Attorney
SUBJECT: Loyalty Oath for Legally Employed Aliens

You have asked this office whether or not an alien legally employed by The City of San Diego must take the oath described in section 211 of the Charter of The City of San Diego. Charter section 211 states, in part, that all officers of the City must "take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State."

California Constitution article XX, section 3 requires "all public officers and employees, executive, legislative and judicial, except such officers and employees as may be by law exempted" to take what is commonly known as a loyalty oath.

California Government Code section 3100 states in part:

In furtherance of the exercise of the police power of the state in protection of its citizens and resources, all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.

California Government Code section 3101 states:

For the purpose of this chapter, the term "disaster service worker" includes all public employees and all volunteers in any disaster council or emergency organization accredited by the California Emergency Council. The term "public employees" includes all persons employed by the state, or any county, city, city and county, state agency or public district, excluding aliens legally employed.
emphasis added

Government Code section 3102 requires that all disaster workers shall, before they enter upon the duties of their employment, take and subscribe to the oath or affirmation required by Section 3103. That section states: "The oath or affirmation required by this chapter is the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California."

In *Miller v. Board of Supervisors*, 121 Cal.App.3d 194 (1981),

the court in reviewing this statutory scheme, stated:

There is nothing equivocal about the legislative expression. All disaster service workers must take the oath (section 3202). Disaster service workers include, inter alia, all public employees, who in turn are all persons employed by the state or any county, etc., except "aliens legally employed." (section 3101) Miller was such an alien. Article XX, section 3 has been fulfilled.

The court indicated that it could not comprehend why the Legislature chose to deal with the loyalty oath subject in a "disaster service workers" context, but nonetheless clearly held that an alien legally employed by a governmental agency is exempt from the loyalty oath provisions of the California Constitution and the Government Code. The oath required by section 3103 is the only oath or declaration of loyalty which may be required of public employees. *Tolman v. Underhill*, 39 Cal.2d 708 (1952); *Bowen v. County of Los Angeles*, 39 Cal.2d 714 (1952); and *Fraser v. Regents of University of Cal.*, 39 Cal.2d 717 (1952). Therefore, City of San Diego employees who are "aliens legally employed" may not be required to take a loyalty oath as a condition of employment with The City of San Diego.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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