

MEMORANDUM OF LAW

DATE: December 17, 1991
TO: Luis Herrera, Deputy Director, Branch Libraries Division,
via William W. Sannwald, City Librarian
FROM: City Attorney
SUBJECT: Friends of the Library Fundraising Activities

BACKGROUND

By memorandum dated November 20, 1991, you have requested our opinion as to whether City library staff may assist in fundraising and sales transactions for Friends of the Library ("Friends") on city time. You have further inquired whether there are any legal ramifications for Friends groups to conduct raffles or similar fundraising activities for the benefit of the City.

ANALYSIS

Council Policy 000-4.

The participation of City personnel on city time in fundraising activities for Friends is contrary to City Council Policy 000-4. This policy provides in relevant part:

No elected official, officer, appointee or employee shall engage in any enterprise or activity which shall result in any of the following:

....

(b) Using time, facilities, equipment or supplies of the City of San Diego for the private gain or advantage of himself or another.

By serving on city time as custodians for funds collected for Friends, City library staff are using city time and facilities for the private gain or advantage of Friends. The fact that the funds raised are ultimately for the benefit of the library has no effect; the funds are still for the private gain of Friends. Although the Council Policy contains no sanctions, it is the policy and direction of the Council and should be adhered to by your personnel.

Administrative Regulation 45.50.

In addition to being contrary to Council Policy, the participation of the library staff in these fundraising efforts is contrary to City Administrative Regulation 45.50. Policy 3.1 of this regulation states: "City labor, equipment, materials, and supplies shall not be used for personal or private purposes, either on City premises or elsewhere, by City employees or others, unless specifically authorized to do so by Council approval." See also, City Administrative Regulation 95.60, Policy 3.6. Here, the use of City library personnel (i.e., City labor) on city time to collect funds for Friends (i.e., private purposes)

constitutes a violation of Administrative Regulation 45.50.

While Council Policy 000-4 contains no sanctions, employees who violate Administrative Regulation 45.50 may be subject to discipline, including termination and criminal prosecution. Administrative Regulation 45.50, Policy 3.2. Consequently, we suggest you no longer allow your personnel to act on city time as custodians for funds collected for Friends.

We note, however, that City library staff may volunteer to act as custodians for these funds on their own time. For example, staff personnel may collect the funds during their breaks or after working hours. If these funds are thereafter retained at the City branch libraries until collected by the officers of Friends groups, then there is potential liability (see, e.g., Cal. Gov't Code Section 822) on the part of the library personnel if the funds are stolen. Should the branch libraries choose to act as custodians for these collected funds, reasonable due diligence must be taken to protect the funds from any potential theft. Should you therefore decide to continue the practice of allowing these funds to be retained at the libraries, we suggest you review the measures which your staff currently employ to protect the funds in order to prevent any future liability. We further suggest you contact the Risk Management Department regarding your procedures and who will be ultimately responsible for securing these funds.

Use of Library Facilities.

Given the benefits the City libraries receive from the fundraising efforts of Friends groups, we can understand that you do not wish to discourage their efforts on your behalf. In order for Friends groups to continue their fundraising activities at the branch libraries, we simply suggest they set up a booth or a table at the libraries to collect such funds. Volunteers from their organizations, or City employees on their own time, could man these tables.

Fundraising Raffles.

You also have requested information on the legal ramifications for Friends groups to conduct raffles or similar fundraising activities for the benefit of the City. The Friends groups are private nonprofit organizations. As such, our office may not provide legal advice to them. San Diego City Charter section 40. We have attached, however, a copy of a memorandum drafted and distributed by the Licensing Division of the San Diego Police Department regarding drawings and raffles. This memorandum sets forth the requirements for legally conducting a "drawing" for fundraising purposes. Please feel free to distribute this memorandum to the various Friends groups. Additionally, they are welcome to contact the Licensing Division if they have any questions about the memorandum or their own activities.

CONCLUSION

In conclusion, while we commend the efforts of Friends groups on behalf of our City libraries, there are direct legal ramifications

resulting from City library personnel participating in their fundraising activities on city time. Such participation is contrary to City Council Policy 000-4. Additionally, it is in violation of Administrative Regulation 45.50.

We note, however, that City library personnel are not prohibited from participating in these activities on their own time. Moreover, City library facilities may be used by Friends groups to collect donations from library patrons.

Finally, we recognize that although the Council Policy and Administrative Regulation are self-imposed prohibitions and therefore subject to amendment, we would not recommend such action. The policies underlying these regulations are far reaching and are important for insuring the ethical administration of our City government.

We hope this information is helpful to you. Should you have any further questions, you are welcome to contact our office.

JOHN W. WITT, City Attorney

By

Kelly J. Salt
Deputy City Attorney

KJS:jrl:273(x043.2)

Attachment

ML-91-105