

MEMORANDUM OF LAW

DATE: April 4, 1991

TO: Ken Fortier, Deputy Chief, San Diego Police Department

FROM: City Attorney

SUBJECT: Direct Commitment by Court to Honor Camps

Your memorandum of March 20, 1991, refers to a discussion with City Manager Jack McGrory and Councilmember Hartley on whether the city could legally operate an honor camp similar to those operated by the county. It states that Councilmember Hartley has in mind the engagement by the city of a private company to set up and operate an honor camp for the city. Such honor camp would receive persons sentenced by the municipal court in "lightweight cases." You asked for research on the legal issues presented by this idea for a city-sponsored honor camp.

We find two legal obstacles to the honor camp concept described in your memorandum. The first is the absence of court authority to sentence persons directly to an honor camp. The other is the comprehensive scheme of state law authorizing counties alone to establish and operate honor camps pursuant to strict, enumerated guidelines. A discussion and analysis of the legal issues inherent in these two obstacles follow.

Honor Camp Placement

The relevant law regulating honor camp placements is stated in the following sections of the California Penal Code:

Section 4114. County classification committee; appointment; compensation; duties

Each county which establishes an industrial farm or camp shall provide a county classification committee, which shall function as follows:

(1) The sheriff shall appoint the members of this committee, which may include members of his staff and qualified citizens of the county. If there is a county jail physician, he shall be an ex officio member of this committee. All committee members shall serve without remuneration.

(2) The committee shall meet at least once weekly for the purpose of assigning each

person who has been sentenced to the county jail to the proper degree of custody and treatment within one of the available adult detention facilities operated by the county. Any person assigned to medical treatment may decline such treatment and provide other care or treatment of himself at his own expense.

(3) Each county prisoner serving a jail sentence of over 30 days shall appear before the committee during the first third of his sentence.

(4) City prisoners who have been recommended to the committee by the chief of police may be transferred to the county industrial farm or camp at the option of the committee.

#### Section 4116. Commitments

No person shall be committed directly by any court to a county industrial farm or camp except as provided in the Welfare and Institutions Code. All other commitments shall be made to the sheriff for placement in such county adult detention facility as the county classification committee may designate.

#### Section 4117. Transfers

No person shall be transferred to an industrial farm or camp unless he has appeared before the county classification committee and has been assigned to that facility.

The Fourth District Court of Appeals held that the relevant laws regulating honor camp placements are contained in California Penal Code sections 4114, 4116 and 4117. *Bradshaw v. Duffy*, 104 Cal. App. 3d 475, 478 (1980).

The California State Attorney General also opined that a court cannot commit a person directly to an industrial farm or road camp (honor camp). 32 Cal Op. Att'y Gen. 48 (1958). The opinion stated at 49 that the act creating the industrial farms or road camps (honor camps) "does set forth a specific procedure that is manifestly mandatory. The imperative word, 'shall,' found in the pertinent sections of the Penal Code (Sections 4114, 4115, 4116, 4117) is susceptible to no other interpretation." (Citations omitted.)

We conclude, supported by the rationale of *Bradshaw v. Duffy*, and the Attorney General's opinion on the subject that Penal Code sections 4114, 4116, and 4117 set forth a mandatory

procedure for the commitment of persons to honor camps. Such procedure fails to authorize courts to sentence persons to an honor camp. Only the classification committee has such authority.

#### Establishment and Operation of Honor Camps

One portion of the proposed city-sponsored honor camp plan would be frustrated by the court's lack of authority under state law to sentence prisoners directly to an honor camp. A question remains to be answered. Does a city have authority to establish and operate an honor camp?

The legal issue raised is whether the state legislature has manifested an intention, expressly or by implication, wholly to occupy the field dealing with the establishment and operations of honor camps. If so, any attempt by the city to establish and operate an honor camp will necessarily be inconsistent with state law and invalid. In re Hubbard, 62 Cal. 2d 919 (1964).

The state legislature has created a comprehensive scheme for the establishment and operation of honor camps within the provisions of California Penal Code sections 4100 through 4137.

The Penal Code provisions dealing with honor camps are very detailed and specific. Each county is authorized to establish honor camps (section 4101). The establishment of an honor camp is initiated by a county resolution of intention to do so (section 4102). While a city has no express authority to establish an honor camp, it may adopt a resolution availing itself of the use of an honor camp proposed by a county resolution (section 4103). The county resolution requires certain specific findings (sections 4104, 4105). The board of supervisors is authorized to acquire by condemnation land and personal property for an honor camp (sections 4106, 4107). The board of supervisors "shall" employ a superintendent and other subordinates to operate an honor camp (section 4108). Discipline rules "shall" be enforced by the superintendent and those subordinate (section 4109).

We conclude that the state legislature has wholly occupied the field dealing with the establishment and operation of honor camps by enacting the comprehensive and detailed provisions of Penal Code sections 4100 through 4137. The proposed city-sponsored honor camp would be inconsistent with current state law and invalid. The proposal would require changes in state law allowing cities to establish and operate honor camps.

Please contact us if we can be of further assistance.

JOHN W. WITT, City

Attorney

By

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Deputy City Attorney

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ML-91-31