

MEMORANDUM OF LAW

DATE: April 25, 1991

TO: Conny M. Jamison, City Treasurer

FROM: City Attorney

SUBJECT: Amending the Municipal Code to Reduce Business Tax
for Taxicabs

As a result of the meeting we had with representatives of the taxicab industry, you requested an opinion as to whether The City of San Diego can tax taxicab businesses in an amount different than the amount charged to other businesses.

Case law has addressed this issue, most recently in *Times Mirror Co. v. City of Los Angeles*, 192 Cal.App.3d 170, 183 (1987):

Neither due process nor equal protection impose a rigid rule of equality in tax legislation "It is well settled that occupations and businesses may be classified and subdivided for purposes of taxation, and it is within the discretion of the Legislature to exact different license taxes from different classes or subclasses of businesses, subject only to the limitations of the state and federal Constitutions in regard to equal protection of the laws. No constitutional rights are violated if the burden of the license tax falls equally upon all members of a class, though other classes have lighter burdens or are wholly exempt, provided that the classification is reasonable, based on substantial differences between the pursuits separately grouped, and is not arbitrary."
(Citations omitted.)

The same conclusion was reached in *Park 'N Fly of San Francisco, Inc. v. City of South San Francisco*, 188 Cal.App.3d 1201 (1987); *United Business Com. v. City of San Diego*, 91 Cal. App.3d 156 (1979); and *Kelly v. City of San Diego*, 63 Cal.App. 2d 638 (1944).

You also requested an opinion as to whether the City may differentiate between independent taxicab drivers (who do not have employees) and taxicab companies (which do have employees).

The same court quoted above also held that:

The power to license for purposes of generating revenue involves the right to make distinctions between different trades and between essentially different methods of conducting the same general character of business "It is recognized that a legislative body may classify and subdivide classes within those engaged in one generic field of activity where there is a reasonable basis for such action." (Citation omitted.)

Times Mirror Co. v. City of Los Angeles, 192 Cal.App.3d at 183-184 (1987).

Further, "classification within the ordinance does not violate equal protection 'if the distinction rests upon a rational basis, and it must be presumed to rest on that basis if there is any conceivable state of facts which would support it.'" Id. at 185, quoting City of San Jose v. Donahue, 51 Cal.App.3d 40, 45 (1975).

Therefore, taxicabs may be taxed at an amount different than other businesses, if the relevant legal requirements are met. The same analysis and conclusion holds true for differentiation among classes of taxicabs. Council could find that such differentiations are reasonable based on the recommendations of staff, taxicab owners, company representatives, and independent drivers.

Please let us know if we can be of further service in this matter.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb:160:504.1(043.2)

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