

MEMORANDUM OF LAW

DATE: August 15, 1991

TO: B. Chris Brewster, Captain, Park and Recreation
Lifeguard Services

FROM: City Attorney

SUBJECT: Rentals of Personal Watercraft for Use in Mission Bay Park

This is a follow-up of our conversation of July 2, 1991 and review of your letters to personal watercraft (jet ski) operators who allegedly rent personal watercraft for use in Mission Bay Park. You told us that there are companies which accept money from rental clients outside the Park area, then direct the clients to meet company employees at specified locations on Mission Bay, where rental craft are provided for the duration of time specified in the rental agreement.

You currently cite companies involved in such activity for violation of San Diego Municipal Code section 63.20.20, and you would like to impound any equipment used in violation of this section, which holds:

It shall be unlawful for any person,
firm or corporation to carry on any commercial operation
or sell merchandise of any kind or to beach or moor any
vessel for the purpose of displaying it for sale,
on any beach or waters adjacent thereto or
in Mission Bay Park unless licensed to do so by the Park
and Recreation Department.

A violation of any provision of the Municipal Code is a misdemeanor, and "shall be punishable by a fine of not more than one thousand dollars (\$1000) or by imprisonment in the County Jail for a period of not more than six months or by both fine and imprisonment." San Diego Municipal Code section 13.0201.

Impounding equipment is not authorized in this case. California Harbors and Navigation Code section 675, entitled Removal of boat from public waterway, a copy of which is attached, allows for removal of a vessel from a public waterway under certain conditions, none of which is applicable in cases such as this. In addition:

under authority of law, municipalities may enforce ordinances by forfeiture of property or money used in violation of the ordinance. However, the courts of this country generally have taken the view that in the absence of express power given by charter or state law,

ordinances cannot be enforced by forfeiture of property of the offender.

McQuillin, Municipal Corporations (3d edition), section 17.08.

We can find no express power in the City's charter or in state law to allow for seizure or the impounding of property under circumstances such as these. We also do not think that you may seize or impound watercraft to use as evidence for proof of violation of the Municipal Code, since other evidence, i.e., photographs of the alleged prohibited activity, would be allowed in a court of law.

As to the propriety of the use of "undercover" persons to assist in enforcing this ordinance, we find no conceptual problem but caution that all such activity be within the bounds of professional law enforcement activity so as not to prejudice any subsequent prosecution.

We understand your frustration with merely continued citing of operators apparently in violation of local statutes, and we will be glad to review any other methods you may have for a solution to this problem.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb:263.2(x043.2)

Attachment:1

ML-91-60