

MEMORANDUM OF LAW

DATE: November 18, 1991
TO: John Delotch, Fire Chief
FROM: City Attorney
SUBJECT: Paramedic Service Delivery Model

In a memo received by our office on October 22, 1991, which was dated October 10, 1991, you asked that two issues be researched in relation to the paramedic service delivery model. First, whether The City of San Diego ("City") can create an exclusive operating zone for establishing one provider for all ambulance transportation service within that zone; and second, whether the City would be able to compel the County of San Diego ("County") to approve a delivery model other than the one County currently requires.

Exclusive Operating Zones

At the present time, there are no California cases nor specific statutes addressing the issue of whether exclusive operating zones are lawful in California. However, in *Gold Cross Ambulance and Tran. v. City of Kansas*, 705 F.2d 1005 (1983), the court held that creating exclusive operating zones was lawful. Specifically, the court held that private ambulance services lacked standing to assert a claim that the metropolitan area citizens were deprived of their right to select an ambulance company by the city's implementation of a single-operator ambulance system to provide all of the city's ambulance service. *Gold Cross Ambulance and Tran v. City of Kansas*, 705 F.2d at 1016.

There is a case being litigated in Monterey County that is set for trial February 1992 that will address the exclusive operating zone issue and other related issues. I spoke with the private attorney (hired by the County) who is handling the case. He is sending me his trial brief. Based on his review of several out of state cases and existing statutes in California, it is his legal opinion that exclusive operating zones can be established in California if certain requirements are met. A follow-up memo will be written addressing this issue after I have reviewed the trial brief and conducted additional research.

Approval of City's Delivery Model

The City may be able to compel the County to accept the City's delivery model. Presently, the County requires two paramedics to accompany patients to the hospital in almost all emergency circumstances in their delivery model. Consequently, needed City paramedics can be taken from Fire apparatuses. The City may seek to implement a delivery model that requires two paramedics only in certain emergency situations.

In order to answer the question whether the City could compel the County to approve its delivery model, and whether the City can "hold the

County responsible for the cost of indigent uninsured patient ambulance transportation," we need to analyze pertinent statutes and case law.

In *City of Lomita v. County of Los Angeles*, 148 Cal.App.3d 671, 673 (1983), the court held that Los Angeles County was statutorily liable to provide emergency ambulance services to all indigent residents of the County.

Health and Safety Code section 1444 provides,

The board of supervisors in each county or city and county, having a population of one million or more, may purchase ambulances, establish and maintain an ambulance service, and prescribe rules for the government and management thereof. In any county where such a service has been established, any person who has been injured in an accident or is ill and in need of immediate transportation to a hospital may be taken to any available hospital. If he is indigent and unable to pay for the service, the cost shall be a proper charge against the county. If he is not indigent, he shall reimburse the county for the cost of transportation, which shall be in accordance with a schedule to be adopted by the board, and in no case less than the actual cost emphasis added.

In addition, Government Code section 29606 provides,

The necessary expenses incurred in the support of the county hospitals, almshouses, and the indigent sick and otherwise dependent poor, whose support is chargeable to the county, are county charges emphasis added.

Consequently, the County, both by case law and statutes, is responsible to provide emergency ambulance service to indigent residents of the county.

Three years later, the court in *City of Lomita v. Superior Court*, 186 Cal.App.3d 479, 481 (1986) held that the term "residents" as used in the case and applicable statutes discussed in its earlier opinion (i.e., *City of Lomita v. County of Los Angeles*, 148 Cal.App.3d at 671) was used broadly to include not only permanent county residents but any person found in the county in need of emergency ambulance service. Also, the court held that the county was required to provide "immediate emergency service" to all those found in the county who need it without inquiry into financial status and the county may seek reimbursement by such means as it found desirable from nonindigent persons transported in emergencies. *City of Lomita v. Superior Court*, 186 Cal.App.3d at 482.

The court clarified how the term "resident" should be defined and also reinforced how a county could provide for "immediate emergency service." In addition, the court indicated the four possible alternatives a county may implement to provide "immediate emergency service," or any combination of such alternatives. The alternatives were specified in

both City of Lomita cases. They are,

(1) The county may create a separate county department to provide emergency ambulance service, equipping such department with the necessary vehicles and other equipment, as well as personnel in such department and pay the expenses of operating such department as it staffs and operates other county departments.

(2) It may assign the duty of providing emergency ambulance service to residents of the county to such existing county department as it may choose and provide that department with the necessary equipment and trained personnel.

(3) It may contract with the cities or local agencies located within the county to provide necessary emergency ambulance service to the residents of the county found within such city or cities; or

(4) It may contract with private ambulance companies.

City of Lomita v. Superior Court, 186 Cal.App.3d at 481, 482.

Therefore, a county is clearly responsible to provide "immediate emergency service" to all residents found in a county. If the County of San Diego has been unable to meet its statutory obligations, then the City may have some leverage to compel the County to accept the City's delivery model. The County, without success, may argue that they have insufficient funds to provide emergency service to the indigent.F

Footnote 5: We recognize the impact of our decision on already limited county budgets. But that is a matter for other parts of government to resolve; we can only decree as the statutes and binding authorities demand. City of Lomita v. County of Los Angeles, 148 Cal.App.3d at 674.

However, the County has the right to determine how the "immediate emergency service" will be provided. Consequently, the County could select private ambulance companies to provide the emergency service presently provided for by the City.

Finally, both the statutes and case law are clear as to who is responsible to provide and fund for "immediate emergency service" and who has the power to determine how that emergency service will be provided. The Fire Department must determine how to use the leverage they have to encourage the County to accept a different and possibly more efficient delivery model. The City Attorney is willing to assist in the negotiations with the County to resolve this issue.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

ELH:mmm:502.1(x043.2)

cc Maureen Stapleton, Assistant City Manager
Susan Swanson, Paramedic Coordinator
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