

MEMORANDUM OF LAW

DATE: November 10, 1992

TO: Christiann Klein, Executive Director, Human
Relations Commission

FROM: City Attorney

SUBJECT: Definition of Support under the Human Dignity
Ordinance

At the Human Relations Commission ("HRC") meeting of October 21, 1992, the HRC moved to address a resolution to the San Diego City Council ("Council") requesting that the City's Municipal Employees Civic Responsibility Organization ("MECRO") Fundraising Campaign be discouraged from contributing to United Way. Additionally, the Commission would request that the Council discourage the City's current practice of loaning City employees to United Way. As a result, you have posed two questions and requested a legal opinion. The following responds to your questions.

Your first question is:

1. Does the City of San Diego's involvement with MECRO and the MECRO Fundraising Campaign constitute "support" under the meaning of the "facilities and services" provision of the City's Human Dignity Ordinance and if so, does such support for an organization which funds the Boy Scouts of America violate the Human Dignity Ordinance because of the Boy Scouts' discriminatory policy regarding sexual orientation?

Before the issue of support can be addressed, the Commission must be made aware of how MECRO functions. It is of primary importance to note that Council has no authority or control over MECRO. Under its constitution, MECRO is an unincorporated nonprofit association of City employees and retirees. Its purpose is to encourage and facilitate City employees' support of and contributions to health and human care programs in the San Diego community. The constitution indicates that the organization strives to maintain a democratic and inclusive nature, to prize and seek out diversity, to value volunteers, and to utilize processes that will help volunteers

increase their self esteem, the meaningfulness of their lives and their skills in working cooperatively and creatively with others. MECRO was not established by Council, nor does it function under the auspices of Council.

More importantly, however, the Board of Directors does not, for the most part, designate to whom MECRO funds are disbursed. There are three methods of disbursement. The primary method is self-identification. That is, each employee designates to which charitable organization he/she wishes his/her contribution to go. Similarly, an employee may designate charitable organizations to which he/she does not wish any portion of his/her contribution to go. Secondly, organizations compete for undesignated funds. Finally, any remaining funds are distributed to United Way.

As an employee founded and run organization, it would be inappropriate for Council to direct, or even to recommend, how an individual employee should choose to designate his or her charitable donations. Although there is no specific legal bar, such actions by Council would clearly invade an employee's personal domain. It may, however, be appropriate for Council to adopt a resolution memorializing its position concerning contributions to United Way and asking City employees to support the Council's position.

Given the make-up and structure of MECRO, any City involvement is very attenuated. The Board of Directors is a volunteer Board. The only real City involvement is the use of a payroll deduction for funding purposes. Additionally, it is United Way, not Boy Scouts of America that MECRO supports. As MECRO funding is comprised solely of individual employee funds and there is no City provided matching funds, there is no City support for purposes of the HDO.

In regard to the question of what is support for purposes of the HDO, San Diego Municipal Code ("SDMC") section 52.9606.3 deals with support of facilities and services. It reads in pertinent part:

It shall be an unlawful service practice for any person to deny any individual the full and equal enjoyment of, or to impose different terms and conditions upon the availability of, any service, program or facility wholly or partially funded or otherwise supported by The City of San Diego, on the basis (in whole or in part) of such individual's sexual orientation. This subsection shall not apply to

any facility, service or program
which does not receive assistance
from The City of San Diego which is
not provided to the public generally.

Implicit in this language is the understanding that the organization receiving assistance from the City must itself engage in discriminatory acts to be found in violation of the HDO. Such is not the case with United Way. There has been no showing, nor even the implication, that United Way engages in discriminatory acts. There can, therefore, be no violation of the HDO.

Your second questions is:

2. Does the City of San Diego's practice of loaning executives from City government to the United Way constitute "support" under the meaning of the "facilities and services" provision of the City's Human Dignity Ordinance and if so, does such support for an organization which funds the Boy Scouts of America violate the Human Dignity Ordinance because of the Boy Scouts' discriminatory policy regarding sexual orientation?

The answer in this case is slightly different from the previous answer because in this scenario the City actually pays the salary and benefits of the employee who is loaned to United Way. Thus, the appearance of support is obvious. Again, however, it is United Way, not the Boy Scouts of America that the City is supporting. It is difficult to conceive of a rational way that this action on the part of the City may be deemed support of a group which discriminates for purposes of the HDO. Clearly, as noted previously, United Way does not discriminate. It has, in fact, in certain instances, refused to fund groups which do. However, at this juncture, United Way of San Diego has opted not to take that step. I have attached a copy of a position letter from United Way indicating its decision to continue funding the Boy Scouts of America until there is a definitive court decision. Based upon the attenuated nature of the City's actions, such provision of funding for United Way does not constitute support of a discriminatory organization by the City for purposes of the HDO.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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Attachment

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