MEMORANDUM OF LAW

DATE: August 24, 1992

TO: Mary Ann Oberle, Deputy Director, Community Park and Recreation Division

FROM: City Attorney

SUBJECT: Advertisements on Tennis Courts

BACKGROUND

You requested us to review proposed agreements between Adcort, Inc. and either the City of San Diego or certain Recreation Councils for placement of advertising signs on tennis court fences (see Attachment A); and to research and respond to the question of whether advertising signs may be placed on tennis courts located on public park land. Our substantive comments on the agreements will be addressed subsequently. This Memorandum of Law addresses the legal problems posed by the placement of such advertisements.

DISCUSSION

The City of San Diego has a detailed regulatory system for the installation of signs. "Sign" is defined in San Diego Municipal Code, Zoning and Planning, Chapter X, section 101.1101.190 as follows:

> Any identification, description, illustration, or device, illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise with the exception of window display and any emblem, painting, banner, pennant, placard or temporary sign designed to advertise, identify or convey information. National flags and flags of political subdivisions shall not be construed

as signs.

San Diego Municipal Code section 95.0101 prohibits the placement of any sign on public property, with a limited number of exceptions:

> No person shall place, paint or secure any lettering, advertisement, card, poster, sign or notice of any kind, or cause same to be done, on any curb, sidewalk, post, pole, lamp post, hydrant, bridge, tree or other surface located on public property except such signs as may hereinafter be lawfully authorized.

1. EXEMPTION

Although there is no specific exemption in the Municipal Code for signs on public property, the California Supreme Court has held that states, counties and cities are not bound by their own zoning ordinances. See Sunny Slope Water Co. v. City of Pasadena, 1 Cal.2d 87 (1934); Kubach Co. v. McGuire, 199 Cal.215 (1926). It is based on this principle of law that our office has consistently exempted City projects from a variety of zoning related restrictions. In 1950, we ruled that a fire station could properly be built in an R-4 zone, though not authorized. San Diego City Attorney Opinions, page 92 (1950). Moreover, in 1980 we ruled that structures for the Point Loma Sewage Treatment Plant were not subject to the thirty (30) foot height limitation. San Diego City Attorney Memorandum of Law, February 1, 1980. Likewise, our August 12, 1983 memorandum ruled that a conditional use permit was not required for a county antenna on Cowles Mountain. Moreover, in our August 25, 1988 Report to Mayor and Council we specifically addressed the issue of whether the City was subject to its sign limitations and concluded:

> Therefore, in the specific case of the San Diego Jack Murphy Stadium, it appears clear that, since the facility is leased and operated as a public facility by the City, the sign ordinance limiting signs to 250 square feet is not applicable to signs at the stadium unless the City ordinance establishing the limitation expressly, or by necessary implication, indicates that it was intended to include City facilities. The City's sign regulations are contained in section 95.0100 et seq.

> and section 101.1100 et seq. of the City's Municipal Code. A review of those regulations indicates that there is no provision specifying that the City shall be subject to the regulations with regard to municipally owned or operated facilities.

Report to Mayor and Council No. 88-44 at page 2 emphasis added.

Hence we reaffirm the view that the City of San Diego is not bound by its own sign restrictions on public facilities such as tennis courts. Indeed even absent this conclusion, the sign restrictions may not pose an impediment. Section 101.1101.90 requires the sign to be "visible from any public place" and we understand that the tennis court signs would be inside the courts. Hence an argument could be made that such inside placement may, in and of itself, exempt such ads from the definition of a sign.

2. PUBLIC PARKS

Despite the above conclusion, our inquiry is not ended. Those tennis courts that are found in dedicated public parks face the added restriction imposed by San Diego City Charter section 55 that requires all dedicated park land to be used for park and recreation purposes. Naturally, what is or is not a park purpose has been the subject of a number of opinions and court decisions. See San Diego City Attorney Opinion No. 72-10 (1972).

While no precise definition can be offered for "park purposes," we note that trash cans have utilized a Coppertone Lotion graphic and that lifeguard trucks have borne the manufacturer's name. Such advertisements do nothing to interfere with the enjoyment by the general public of their dedicated park land. Moreover it requires no leap of faith or logic to opine that since hotels, restaurants and museums are common in public parks, so too are corresponding advertisements calling attention to either their services or products.

> As a matter of public knowledge, we are aware that the erection of hotels, restaur-ants, museums, art-galleries, conservatories, and the like in public parks is common, and we are not pointed to any authority where it has been regarded as a diversion of the legitimate uses of the park to establish them, but, on

> the contrary, their establishment has
> been generally recognized
> as ancillary to the complete
> enjoyment by the public of the
> property set apart for their benefit.

Spires v. City of Los Angeles, 150 Cal.64, 66 (1906).

Since such facilities have been adorned with advertisements without violating the park purpose rule, it cannot be logically contended that tennis courts should not be similarly treated. We are not unmindful of our August 10, 1988 memorandum advising against "monument" signs in dedicated park land, but those were freestanding signs that have no relationship to a proper park facility. Hence signs that are ancillary to and consistent with the park's use and do not interfere with its park and recreational purpose are not rendered illegal by the restrictions imposed by dedicated park land.

3. ADDITIONAL CONCERNS

While we find no legal prohibition to ancillary advertisements on tennis courts, we would be remiss in not mentioning the potential effect on the City's overall effort to limit signs. There has been costly and protracted litigation which has proceeded as far as the United States Supreme Court (Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981)), concerning the City's sign code, and it is important to understand that each exception by the City to the existing sign code may undermine the justification of the current ban on signs on public property. Please see the attached memorandum by Deputy Planning Director Joe Flynn concerning this issue (Attachment B).

Of course, it is a policy decision whether to request City Council authorization for these particular types of signs, but we do urge your consideration of Mr. Flynn's points in pursuing this program.

JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney

TB:MKJ:mb:680.5(x043.2)
Attachments: A and B
cc Joe Flynn,
Deputy Planning Director
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