

MEMORANDUM OF LAW

DATE: January 4, 1993

TO: Jack McGrory, City Manager
Ed Ryan, City Auditor

FROM: City Attorney

SUBJECT: Payment of Legal Fees to Gray, Cary, Ames & Frye
for Services of Attorney Josiah Neeper as Special
Counsel Regarding the Spaulding-Bray Matter

You have requested us to review the legal propriety of payment of certain legal fees to the law firm of Gray, Cary, Ames & Frye for certain legal services provided to the City by Josiah Neeper, Attorney-at-law, a partner in Gray, Cary, Ames & Frye, regarding the so-called Spaulding-Bray matter.

Specifically, you have asked whether, in our view, it is necessary to obtain specific additional City Council approval for the payment of these legal fees in the amount of \$18,756.40.

The answer to your inquiry is that we do not believe specific additional authorization or approval is necessary. Our reasoning follows:

On April 8, 1991, the City Council adopted Resolution No. R-277615, which continued the on-going appointment of Mr. Neeper to the City's management team as its Special Labor Counsel, pursuant to the provisions of the Meyers-Miliias-Brown Act. As you know, Mr. Neeper has served in that capacity for a number of years and the annual appropriation ordinance allocates money to reimburse him for his services in that capacity.

On May 14, 1991, in a closed session called by the Mayor to discuss the handling of the Spaulding-Bray matter (and duly noticed as potential litigation under the Brown Act), it was suggested by the Mayor that Mr. Neeper's services as the City's Special Labor Counsel be utilized to conduct an inquiry into the facts and circumstances surrounding the settlement of the Bray claim by the City Manager. This suggestion was ratified in open session under Council Comment. (This office was never requested to memorialize that decision in the form of a formal Council resolution, but a copy of the duly-approved Council minutes is attached as Enclosure (1).

On June 3, 1991, the report and recommendations of Mr.

Neeper were delivered orally to the City Council in open session and Resolution No. R-278044 was duly adopted.

In our view, it was clearly the intent of the City Council to utilize Mr. Neeper's services under his agreement with the City to serve as our outside Labor Relations Attorney and that he be paid pursuant to Resolution No. R-277615, which appointed him as an ongoing member of the City's management team.

Thus, no further City Council action was (or is) needed.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:js:041:(x043.2)

Attachment-Enclosure (1)

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