

MEMORANDUM OF LAW

DATE: January 12, 1994

TO: Bruce Herring, Deputy City Manager

FROM: City Attorney

SUBJECT: San Diego Convention and Performing Arts Center
Employees

You asked this office to review a letter dated December 7, 1993 to Jack McGrory from a group of individuals who refer to themselves as the "CPAC 10." These individuals are alleging that they have been treated unfairly by The City of San Diego as a result of the transfer of the Convention and Performing Arts Center to the San Diego Convention Center Corporation which took place on August 1, 1993.

The CPAC 10 state in the letter that they met with Jack McGrory, City Manager, and a member of the Mayor's office, on December 1, 1993 in an attempt to resolve numerous grievances concerning their employment situation. They indicate that at this meeting Jack McGrory referred to them as "City of San Diego employees," and that previously the Mayor's office had expressed sympathy about their situation.

With that understanding, they asked the City of San Diego to resolve several issues. The first issue concerns an employee who performed services at the San Diego Concourse for approximately twenty-five (25) years. Upon transfer of the operation of the City's San Diego Convention and Performing Arts Center to the San Diego Convention Center Corporation, this employee was given a temporary position with the San Diego Convention Center with a termination date of February 1, 1994. This person desires the employment to continue. Second, the CPAC 10 indicate that they have never received actual notice of termination from City of San Diego employment when the merger of the San Diego Convention and Performing Arts Center with the San Diego Convention Center Corporation occurred on August 1, 1993. Third, the CPAC 10 desire to retroactively be entitled to the benefits of the City of San Diego's Supplemental Pension and Savings Plan and the City Employees Retirement System retroactively. Finally, they indicate that as City of San Diego employees, they should have been accumulating seniority and merit

step increases for their length of service as City employees. They appear willing to negotiate these issues with the City of San Diego.

The issue of the legal status of the employees of the Convention and Performing Arts Center has been the subject of numerous questions over the years. With the exception of the General Manager and the Assistant General Manager of the Convention and Performing Arts Center, all employees of CPAC have been hired through an independent contractor. The issue of who was responsible for the fringe benefits of the employees of the independent contractors, at both the San Diego Stadium and the Convention and Performing Arts Center was addressed in two separate opinions of this office in 1980. (See attached City Att'y Op. 80-1 (1980) and City Att'y Op. 80-3 (1980).) Although the contractors have changed over the years, this office still maintains that the independent contractors are solely responsible for the compensation of their employees.

Although the CPAC 10 may believe that for a variety of reasons they deserve to be treated as if they were City of San Diego employees, at no time was their status as employees of an independent contractor legally changed. Absent statutory authority they have no claim to benefits as City employees. *County of San Diego v. Milotz*, 46 Cal. 2d 761 (1956); *Kennelly v. Lowery*, 64 Cal. App. 2d 903 (1944); *Hallinan v. Melon*, 218 Cal. App. 2d 342 (1963). Their grievances are properly addressed to their former and present employers.

While certain members of the San Diego City government may sympathize with the concerns expressed by the CPAC 10 in their letter of December 7, 1993, because of these employees long and loyal service to the Convention and Performing Arts Center, we are unaware of any legal authority that would authorize The City of San Diego to financially participate in resolving their disagreements with their former employer. Unfortunately, compensation for services rendered to a public agency depends entirely upon the law and statutes relating to such compensation and are strictly construed in favor of the agency. *Alfred v. County of Los Angeles*, 101 Cal. App. 3d 260 (1980).

We understand that the CPAC 10 have serious concerns about these issues and have retained an attorney to represent them. Unfortunately, the City of San Diego was not the employer of record for these individuals during the disputed period. This places a significant legal impediment in the path of a City of San Diego sponsored solution. It may be beneficial, however, for us to arrange a meeting with Jack McGrory to discuss any other possible solutions which may necessarily involve the San Diego Convention Center.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Assistant City Attorney

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Attachments

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