

MEMORANDUM OF LAW

DATE: June 7, 1994

TO: Mary Rea, Assistant Risk Management Director

FROM: City Attorney

SUBJECT: Workers' Compensation Coverage for Mt. Hope/Helix  
Heights Residents Association

By letter dated April 4, 1994, Mr. Reynaldo Pisano, president of the Mt. Hope/Helix Heights Residents Association ("Assn.") asked you to confirm that individuals performing volunteer Neighbor Hood Clean-ups for the Assn. would be insured for workers' compensation claims pursuant to City Council Resolution No. R-254933.

Resolution No. R-254933 provides that individuals performing volunteer public services as part of a recognized City volunteer program will be compensated through the City's workers' compensation program for injuries incurred while performing the volunteer services. At first glance, it appears that members of the Assn. are part of a recognized City program and therefore eligible for City funded workers' compensation. However, a number of issues are raised by the provisions of the written agreement between the Assn. and the Redevelopment Agency of the City of San Diego ("Agency").

The first issue is the relationship of the Assn. to the City and to the Agency. The City and the Agency are not a single organization. From the agreement, it is clear that the Agency is the contracting entity. The Agency is an independent entity from the City and cannot, through an agreement, bind the City in a contractual relationship that imposes liability on the City, absent the City's participation as a party to the agreement. A careful reading of the agreement shows that funding is provided by the Agency, and the Agency is the monitoring organization. No participation by the City is indicated in the agreement. Under these circumstances, the City is not an interested party.

A second issue is whether the Assn. members are employees of the Agency and therefore covered by Agency funded workers' compensation benefits. Here, again, the answer is no. Workers' compensation coverage results only from an employer/employee relationship. "The principal test of an employment relationship

is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." *Tieberg v. Unemployment Ins. App. Bd.*, 2 Cal. 3d 943, 946 (1970). Page 5 of 21 of the Agreement, Article VI provides the following:

VI. INDEPENDENT AGENCY

Association is and shall be an independent contractor and not an agent of the Agency hereunder. Any provision in this agreement that may appear to give the Agency the right to direct Association as to the details of doing the work, or to exercise a measure of control over the work, means that Association follow the wishes of the Agency as to the results of the work only.

The general rule regarding independent contractors under California Labor Code section 3353 excludes independent contractors from workers' compensation coverage. Since the Agreement specifically provides that the Assn. is an independent contractor, the language of the resolution precludes members of the Assn. from eligibility for workers' compensation coverage by the Agency. The courts, however, have indicated the language of the contract is not the final measure of independence. The courts defined independent contractors in the early case of *Green v. Soule*, 145 Cal. 96, 99 (1904) by stating:

An independent contractor is one who, in rendering services, exercises an independent employment or occupation, and represents his employer only as to the results of his work, and not as to the means whereby it is to be accomplished . . . . The chief consideration which determines one to be an independent contractor is the fact that the employer has no right of control as to the mode of doing the work contracted for.

This basic premise applies to the current situation and one must, therefore, look to the actual relationship between the parties to determine whether an employer/employee or independent contractor relationship exists. The agreement specifies that the Agency responsibilities are limited to monitoring and funding the program. Although the scope of work is specified in the agreement, the Agency is specifically precluded from controlling

how the work is to be performed or by whom it is to be performed.  
There is a distinct separation between the Agency and the Assn.

#### CONCLUSION

Absent an express agreement, no liability may be imputed to the City, as a non-party, for workers' compensation injuries incurred by Assn. members. Additionally, from the language of the agreement, it is clear that no employer/employee relationship exists between the Agency and the Assn. The Agency does not determine which individuals provide the volunteer services or how the work is performed. No other indicia of employment between the parties is evident. The language of the agreement merely reinforces the apparent independent contractor relationship. Absent an express written agreement between the parties, the Assn. is not covered by Agency unemployment insurance.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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