

## MEMORANDUM OF LAW

DATE: January 24, 1995

TO: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: Citizen Grant Kimball's Letter Re: Veterans' Exemption to  
Business Tax

### QUESTION PRESENTED

We received a route slip (No. 06-1194-011) asking us to review and respond to Mr. Grant Kimball's letter (attached) protesting the denial of his request for a Veterans' Exemption to the Business License Fee.F

The City imposes a business license tax, actually a fee, for revenue-raising purposes. See San Diego Municipal Code ("SDMC") sections 31.0101 and 31.0301.

Currently, only disabled veterans are exempted from the City's business license tax. Mr. Kimball asked four specific questions to which we respond.

Question 1) Is the City Treasurer unlawfully denying an exemption, under Business & Professions Code section 16102, to qualified veterans?

The City Treasurer's Office correctly denied Mr. Kimball's request for a veterans' exemption to the City's business tax. California Business & Professions Code ("B & P") section 16102, which exempts all veterans from business taxes, applies only to counties and not to cities. (See letter from City Treasurer, dated September 28, 1994, which is attached.)

Pursuant to B & P Division 7, Part 1, Licensing for Revenue and Regulation, certain veterans of the armed forces are exempt from paying business license taxes or fees. Regulations for licensing by cities are found in Chapter 1 of that Part.

Regulations for counties are found in Chapter 2.

Section 16001, within Chapter 1 and concerning cities, is entitled Disabled Veteran Peddlers' Exemption:

Every honorably discharged or honorably relieved soldier, sailor, or marine of the United States or Confederate States who served in the Civil War, any Indian war, the Spanish-American War, any Philippine insurrection, the Chinese Relief Expedition,

the World War of 1914 and years following, or World War II, who is physically unable to obtain a livelihood by manual labor, and who is a voter of this state, may distribute circulars, and hawk, peddle, and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous, or other intoxicating liquor, without payment of any license tax or fee whatsoever, whether municipal, county or state, and the legislative body shall issue to such soldier, sailor or marine, without cost, a license therefor.

(emphasis added).

Section 16102, entitled Veterans' Exemption, is Chapter 2, governing counties:

Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisor shall to such soldier, sailor or marine, without cost, a license therefor.

(emphasis added).

Although both the city and county sections include reference to municipal fees, a California Attorney General opinion, 14 Ops. Cal. Atty. Gen. 226 (1949), concluded that Section 16102 is applicable only to counties. That opinion is attached for your review. It was this Attorney General opinion that provided the basis for the City's present policy of exempting only disabled veterans from the business tax.

The California appellate case to which Mr. Kimball referred in his letter, *Brooks v. County of Santa Clara*, 191 Cal. App. 3d 750 (1987), concerned a county's business tax. In fact, that opinion only mentions cities in reference to the same Attorney General opinion we cited previously. Note that the court did not criticize the Attorney General opinion.<sup>F</sup>

See *Brooks* at 757, where "the questions to which the Attorney General responded focused in pertinent part upon the question whether section 16102 applied to cities as well as counties. . . ."

Question 2) Has the City Treasurer complied with the

requirements of the Public Records Act?

The Treasurer's Office did comply with the Public Records Act. See the attached September 28, 1994 letter.

The California Public Records Act is found in California Government Code ("G.C.") sections 6250-6268. Sections 6256 and 6257F

The relevant portion of Section 6256 states: "Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency. . . ." (emphasis added). The relevant portion of Section 6257 states: "Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person. . . ." (emphasis added). require only that records be made available. The specific question need not be answered if the information is not readily available or if the City does not keep records of the information requested. The relevant files shall be made available to Mr. Kimball to search if he so desires.

Question 3) How many requests for the veterans' exemption have been received by the City Treasurer?

The answer to this question is the same as the answer to question 2. The Treasurer's Office has told Mr. Kimball that this information is not readily available.

Question 4) How many of the 700,000 business licenses that are currently valid were issued pursuant to the veterans' exemptions contained in either Section 16001 or Section 16102?

This information is also apparently not readily available. Please see the answer to questions 2 and 3.

#### CONCLUSION

The City Treasurer's Office correctly denied Mr. Kimball's request for a veterans' exemption to the City business tax. The Business & Professions Code section on which Mr. Kimball relies applies to counties, not to cities. Mr. Kimball's public record request was also answered properly by the Treasurer's Office. If the information Mr. Kimball requested is not easily identifiable or available, the City need only make its records available to him. Mr. Kimball may search through the records to try and find the information he seeks.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb:190(x043.2)

Attachments

cc Conny M. Jamison, City Treasurer

Bijan Zayer, Revenue Program Manager

ML-95-06