

MEMORANDUM OF LAW

DATE: November 14, 1995

TO: Kadee Gonzalez, Human Resources Manager, Housing Commission

FROM: City Attorney

SUBJECT: San Diego Housing Commission Participation in The City of San Diego's Employee Group Benefits Program

QUESTION PRESENTED

May the San Diego Housing Commission ("Commission") join with The City of San Diego ("City") for purposes of inclusion in the Group Health Plans offered by the City under its cafeteria plan?

SHORT ANSWER

The City's flexible benefit plan is a cafeteria plan. The Internal Revenue Code mandates that cafeteria plans be employer sponsored. Commission employees are not City employees and may not, therefore, avail themselves of City sponsored plans. However, this does not prohibit the City and Commission from entering into some type of collaboration for the limited purpose of negotiating premium rates.

BACKGROUND

The Commission is an independent corporation wholly owned by the City. Its employees are offered health benefits through a flexible benefits plan similar to the City's flexible benefits plan. Because the employee pool for the Commission is small, the Commission is unable to obtain the same advantageous rates on health care premiums the City receives with its much larger employee pool. The Commission has requested that it be allowed to combine the City's health plans with those of the Commission and thus have access to the reduced rates available to a larger pool.

ANALYSIS

The City's flexible benefits plan is established as a cafeteria plan under the auspices of Internal Revenue Code Section 125. In pertinent part it provides:

- (d) Cafeteria plan defined.-For purposes of this section-(1) In general.-The term "cafeteria plan" means a written plan under which-
 - (A) all participants are employees, and
 - (B) The participants may

choose among 2 or more benefits consisting of cash and qualified benefits.

I.R.C. Section 125(d)(2) (emphasis added).

The unambiguous language of the statute mandates that the plan be employer sponsored. The Commission is in fact a sub-agency of the Housing Authority, which is a state agency. Cal. Health & Safety Code Section 34290; San Diego Municipal Code Section 98.0301. Commission employees are not employees of the City for any purpose. They are not appointed by the City Manager or other department head as unclassified employees nor subject to City Civil Service provisions as classified employees. They do not receive paychecks from the City, nor are they members of the City's recognized bargaining units. Thus, under the plain language of the Internal Revenue Code, Commission employees are precluded from joining in the City of San Diego's cafeteria plan.

Principles of statutory construction dictate that "if the words of a statute when given their ordinary and popular meaning, are reasonably free of uncertainty, courts will look no further to ascertain the statute's meaning . . . and in construing a statute a word should not be given a forced and strained meaning contrary to its common understanding" *People v. Tierce*, 165 Cal. App. 3d 256, 269 (1985)(quoting *County of Orange v. Flournoy*, 42 Cal. App. 3d 908, 912 (1974)). The ordinary and plain meaning of the statutes does not permit Commission employees to be considered City employees.

Although the Commission employees may not be eligible for benefits under the City's cafeteria plan, other avenues may be available that would allow the Commission access to City rates. The City may be able to join with the Commission in a different type of agreement, such as a joint powers agreement, to achieve a similar purpose. For example, the City is a member of the California State Association of Counties for purposes of obtaining its liability insurance. Joining with other public sector agencies for this purpose has allowed the City to purchase liability insurance at rates that are vastly superior to the rates the City was able to negotiate on its own. Such an arrangement may be an avenue the Commission should explore.

CONCLUSION

Internal Revenue Code Section 125 mandates that a cafeteria plan established under its auspices be employer sponsored. Commission employees are not employees of the City. Therefore, they may not join the City of San Diego's cafeteria plan.

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By

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ML-95-80