

MEMORANDUM OF LAW

DATE: August 11, 1998

TO: John Walter, Golf Operations Manager, Park and Recreation Department

FROM: City Attorney

SUBJECT: Resale of Municipal Golf Course Tee Times by Private Companies

QUESTIONS PRESENTED

1. Is it legal for a private company to sell a public service that is offered to the public for free?
2. Is it legal for private companies to offer golf services (such as scoring or tournament coordination) for sale that the lessee, Torrey Pines Club Corporation, can provide?
3. Is it legal for these private companies to secure tee times for the purpose of speculative resale?
4. Is it legal for these private companies to use the “Torrey Pines” name?

SHORT ANSWER

Under the current provisions of the San Diego Municipal Code, reselling admission at a profit is only illegal if done on a public street, sidewalk, park, or other public place. If, as is the case here, the resale occurs at a private location, it can be done legally. The Municipal Code could be amended by the City Council to make these resales illegal. Finally, the Torrey Pines name is so widely used by a variety of businesses in addition to the Torrey Pines Municipal Golf Course [Golf Course], that private companies are free — short of calling themselves Torrey Pines Municipal Golf Course — to use the Torrey Pines name.

BACKGROUND

In 1992, The City of San Diego Park and Recreation Department, Golf Operations, implemented a computer reservation system for tee time booking. Shortly thereafter, individuals, and later businesses, began reserving tee times and selling them to others. Today, there are at least five businesses that regularly sell Golf Course tee times. Park and Recreation staff asked this office for an opinion about the legality of this practice. At that time, our Office opined that the reselling of tee times was legal.

In response to public complaints, the Golf Advisory Council created a subcommittee in the Fall of 1996, to look into this issue. The City implemented the subcommittee's recommendations, including changes to the computerized reservation system, allowing individuals calling for tee times to be on equal footing with companies using computerized dialing programs. Since 1996, however, individuals have failed to achieve equal footing, as the selling of tee times has continued and golfers have been unable to obtain tee times without going through a broker. The subcommittee asked Park and Recreation staff to revisit the issue. In that regard, you have asked the questions presented above.

DISCUSSION

The first and third questions that you ask — whether a public service can be resold and whether tee times can be secured for speculative resale — involve the same analysis. In order for the activities complained of in your memorandum to be illegal, there must be some local, state, or federal law that declares them illegal. There is, however, no law which makes the resale of tee times illegal. Both state law and the Municipal Code regulate the resale of tickets to entertainment events. California Penal Code section 346 makes it a misdemeanor to resell a ticket to an entertainment event at any price in excess of the price printed on the ticket, while on the grounds where the event is to be held. Likewise, Municipal Code section 57.14 prohibits resale for profit of tickets to various events, if the resale is in a public place. Neither section specifically addresses resale of free items, such as tee times. Assuming, for the sake of argument, that these types of resales are covered by the above sections, they would not prohibit the resales complained of in your memo. Because the resales in question are made on private property, they are not prohibited by these sections, and are legally permissible transactions.

Though the resale of tee times is legal, the City Council, at its discretion, could amend the Municipal Code to make it illegal. By amending Municipal Code section 57.14, the City Council could add specific provisions regarding golf courses, or could broaden the language to prohibit the resale of tickets wherever done. In making this policy decision, the City Council would weigh that, although one group of people has complained about the resale of tee times, others benefit from it. Many hotels, for example, package these resold tickets in golf packages which they use to attract tourists to San Diego. The discussion of whether to prohibit resale of tee times would probably be referred to Council Committee, and later be decided by the City Council.

Your second question is whether it is legal for private companies to offer golf services (such as scoring or tournament coordination) that the lessee can provide. In your memorandum, you ask whether the lease for the Torrey Pines Municipal Golf Course Pro Shop, Driving Range

and Cart Rental (approved by City Council Resolution R-267979 on March 30, 1987) might preclude these activities. It does not. The lease contains nothing which grants the lessee an exclusive right to perform these services. So, the lease does not justify preventing private companies from performing these services for their clients.

Although the lease does not preclude private companies from performing these services, the Municipal Code might. Municipal Code section 63.0102(b)(14) makes it unlawful to “practice, carry on, conduct, or solicit for any trade, occupation, business or profession [in a public park] without the written consent of the City Manager.” If the scoring or tournament coordination activities are determined to be “practicing or conducting a trade or business,” and they are done on the golf course, without the written consent of the City Manager, they are illegal.

Your final question is whether it is legal for private companies to use the “Torrey Pines” name. Federal law, specifically section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), protects against misappropriating trademarks or service marks in a manner that is likely to deceive consumers. These provisions would prevent companies from holding themselves out, or representing themselves, as the Golf Course. They do not, however, prevent companies from merely using the name Torrey Pines. Torrey Pines is a locational identification, like La Jolla or San Diego. It is an identification used by many businesses. In fact, the business listing of the Pacific Bell White Pages contains thirty-nine separate entries for businesses using the Torrey Pines name. It would be neither legal nor practical to single out the businesses complained of in your memorandum, and try to prevent them from using the name Torrey Pines.

CONCLUSION

In the past, this Office has opined that the resale of tee times at the Golf Course is legal. That opinion has not changed. Because the resale of tee times by private companies takes place at private locations, it is not prohibited by the Municipal Code. The City Council, however, could amend the Municipal Code to prohibit tee time resales. Activities such as scoring or tournament coordination, if characterized as carrying on or conducting a business or trade in a public park, are prohibited by the Municipal Code, unless approved by the City Manager. Finally, the Torrey Pines name is not a protected trademark or service mark; it is widely used by a variety of businesses, including the Golf Course, and cannot be prohibited.

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By
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cc: Marcia McLatchy
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