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MEMORANDUM OF LAW

DATE: October 25, 2004

TO: Charles Kindred, Assistant Deputy Director, Parking Management

FROM: City Attorney

SUBJECT: Public Officers

INTRODUCTION

Parking Management deals with issues that touch the everyday lives of many San Diegans. Sometimes these issues erupt into rather contentious moments with members of the public when parking enforcement is required. At times there has been confusion between the public, Parking Management, and the Police Department as to classification of crimes relating to parking enforcement officers. Due to the need to protect the integrity of Parking Enforcement's assigned task and provide valuable service to the community, Parking Management has inquired into the status of parking enforcement officers as "public officers."

QUESTION PRESENTED

Are parking enforcement officers "public officers" as currently defined by California law?

SHORT ANSWER

Yes. Parking enforcement officers are "public officers" because their powers and duties involve exercising sovereign powers of the City of San Diego.

ANALYSIS

I. Parking Enforcement Officers Meet the State Supreme Court Test of Public Officers

California Codes call out many specific occupations and list them as "public officers." Many occupations and titles are however left out of state codes, and those exceptions have been left for court interpretations. Additionally, there are dozens of definitions of "public officer"

available in law dictionaries, judicial opinions, and secondary sources. Unfortunately, there is nothing on point as it relates to parking enforcement officers. However, the California Supreme Court has given us a definition and test which is applicable to those occupations left out of the codes.

The California Supreme Court first promulgated the following definition of “public officer,” which has been quoted and followed by California courts adjudicating the issue: “[W]here the legislature creates the position, prescribes the duties, and fixes the compensation, and these duties pertain to the public and are continuing and permanent, not occasional or temporary, such position or employment is an office and he who occupies it is an officer. In such a case, there is an unmistakable declaration by the legislature that some portion, great or small, of the sovereign functions of government are to be exercised for the benefit of the public.” *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 639 (1940), quoting *Patton v. Board of Health of City & County of San Francisco, et. al.*, 127 Cal. 388, 398 (1899).

Case law has since developed necessary elements for classification of employees as “public officers.” First, there must be an authority conferred by law; second, the power conferred must include the ability to exercise some portion of the sovereign functions of government; and third, the position must have permanency and continuity. *See, e.g., Coulter v. Pool*, 187 Cal. 181 (1921). Duties of an officer are generally, but not always, prescribed by law. *Patton* at 388.

Locally the Courts have upheld long standing definitions of “public officer”:

The term officer, in its common acceptance, is sufficiently comprehensive to include all persons in any public station or employment conferred by government The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.

City Council of the City of San Diego v. Hugh McKinley, 80 Cal. App. 3d 204, 210 (1978).

In following *Coulter* and upholding *McKinley*, the California Supreme Court subsequently held that:

As the Court of Appeal acknowledged in *McKinley, supra*, our own decision in *Coulter v. Pool*, 187 Cal. 181 [201 P. 120] (1921), "has become the leading authority in this area." (*City Council v. McKinley, supra*, 80 Cal. App. 3d at p. 210.) In *Coulter, supra*, we reconsidered and rejected ancient authority that broadly defined the term "public officer," AND REACHED THE FOLLOWING CONCLUSIONS: "A public office is ordinarily and generally

defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a *public function* for the benefit of the public The most general characteristic of a public officer, which distinguishes him from a mere employee, is that *a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.* . . .

Randy Dibb v. County of San Diego, et al, 8 Cal. 4th 1200, 1211-1212 (1994).

Municipal corporations exercise part of the sovereignty of the state in management and control of streets within their jurisdiction. *Argues v. City of Sausalito*, 126 Cal. App. 2d 403, 406 (1954), citing *People ex rel. Bryant v. Holladay*, 93 Cal. 241, 248 (1892). Also, courts have interpreted parking laws to be delegated to local authorities, “In our view, the Legislature did not intend to restrict local governments in the manner suggested by appellant Instead, it intended to delegate power to local authorities to place parking restrictions on ‘any type of vehicle,’” *Homes on Wheels v. City of Santa Barbara*, 119 Cal. App. 4th 1173, 1178 (2004).

The City of San Diego has delegated its sovereign power of parking enforcement to City police officers and parking enforcement officers. In San Diego, there is authority conferred by law to the parking enforcement officers to effect non-custodial arrests, to issue misdemeanor citations, and to issue notices to appear for violation of various municipal, county, and state laws pertaining to parking and vehicles generally. *See, e.g.*, City of San Diego Municipal Code §§ 82.07 and 12.0102; California Penal Code § 836.5. Clearly, parking enforcement officers are exercising some portion of the sovereign powers of the City of San Diego. Furthermore, there is no indication that the position is temporary. Therefore, San Diego Parking Enforcement Officers possess all three necessary requirements for “public officer” status, meeting specific and general definitions of “public officer.”

II. Oath is Not Necessary to be a Public Officer

The three requirements mentioned above are not exhaustive. California courts have looked to other factors as well, such as whether or not the position requires an oath of office or the posting of an official bond. It is nonetheless apparent that, other than the three above-mentioned requirements, no other factor is dispositive.

“While the definitions given by the adjudicated cases of a public office are generally or substantially the same and are governed by the facts and circumstances of each particular case, the *principal test* as to whether a position created by statute is or is not a public office is whether the duties of such position or employment

involve the exercise of any part of the sovereign power of the state.” (Emphasis added)

Curtin v. State, 61 Cal. App. 377, 390 (1923).

Oath or official bond is thus not required for officer status. *Id.* Because the parking enforcement officers are exercising a sovereign power of the City of San Diego in enforcing parking regulations within the City, they are “public officers” even if no other factor is present.

III. Parking Enforcement Officers Are Not Mere “Employees”

Some courts have held that when there is nothing in the nature of the employment itself that calls for the presence of a public functionary and when every one of their duties can be discharged by a private agent, they are mere employees, do not hold public offices, nor are they “public officers.” *See, e.g., Mason v. Los Angeles*, 130 Cal. App. 224, 230 (1933). In holding that a firefighter was not a “public officer,” the Mason court was concerned that such a broad construction of “public officer,” “[W]ould make a public officer of every person, however menial his duties, employed in a department of the municipality, to whom the charter has given certain functions to perform for the public benefit, because he is appointed, his position is created, and his wages or salary is fixed, by law.” *Id.* This concern is not at issue here because the definition of “public officer” remains limited by the requirement that the position involve the “exercise of sovereign power”; all employees do not exercise sovereign power.

Including parking enforcement officers in the definition of “public officer” will not create an unintentional effect. However, our Office has previously opined that “[A]s a general rule it is recommended that all City employees be considered ‘officers’ due to the uncertainty of guides for public officer status and the fact that general requirements such as the ones mentioned above would require judicial determination before the issue could be settled with certainty.” *See* 1955 Op. City Att’y 146, 147. The express City Attorney opinion, combined with the distinguishing fact that the Mason court based its holding on provisions of the City of Los Angeles Charter, further lends support to including parking enforcement officers as “public officers.”

The analysis is not changed by the Municipal Code reference to “non-sworn employees charged with enforcement of the provisions of Chapter 8.” San Diego Municipal Code § 82.07(a). Because the Code uses the word “employees,” an argument could be made that the legislature intended this to be their legal status. On the contrary, “it has been determined that the duties and powers which are to be exercised by an individual determine his relationship to the municipality or other governmental agency, rather than the mere name which is assigned to his position.” *Sharpe v. City of Los Angeles*, 136 Cal. App. 732 (1934), citing *Coulter v. Pool*, 187 Cal. 181 (1921); *Logan v. Shields*, 190 Cal. 661 (1923); *Rand v. Collins*, 214 Cal. 168 (1931); *Staheli v. City of Redondo Beach*, 131 Cal. App. 71 (1933). The question of their legal status, as officers or not, should be tested by their duties and functions, rather than by their designation in direct terms as employees. If their duties and functions are those of “public officers,” that fact is

sufficient to establish their legal status as such officers. *Spreckels v. Graham*, 194 Cal. 516, 530 (1924); *Logan v. Shields*, 190 Cal. 661 (1923). In San Diego it is apparent that parking enforcement officers' duties and functions are those of a "public officer" in that they are serving a law enforcement function. Law enforcement officers are "public officers"; thus, parking enforcement officers, carrying out the same duties and functions as a police officer with regard to parking, should be classified as "public officers" as well.

CONCLUSION

In keeping with express City Attorney opinion and in following a line of local appellate court decisions as well California Supreme Court decisions defining the term "public officer," parking enforcement officers are included as "public officers."

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Attachment

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