
**CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
INTEROFFICE MEMORANDUM**

TO: City Council

FROM: Linda Nguyen, Deputy City Attorney

DATE: November 10, 2004

SUBJECT: Follow-up Report/Use of City Seal; City Officials and Employees Engaged in Political Activity; and Use of City Property for Political Activity

This Follow-up Report is pursuant to Council Member Cowan's request at the City Council Meeting of November 1, 2004.

1. Use of City Seal

As a trademark, the City Seal (the "Seal") is the personal property of the City. The City can control how the City Seal is used as well as prevent other people or entities from using it. In a memo dated December 9, 2002, the City Attorney's Office informed the City Manager that the City could either rely on its common law trademark rights or register the Seal as a trademark. Based on the City Attorney's advice that the registration of a trademark provided more protection, the City Manager directed the City Attorney's Office to register the Seal. It was then determined that the official seal of a municipality could not be registered as trademark.

Despite the prohibition against registering a city seal as a trademark, the City can still rely on its common law trademark rights to prevent others from using the Seal.¹ The factors that a court would use to determine if the City has a protectable trademark right in the Seal include how long the Seal has been in use, how often the City uses the Seal and the number of other people, if any, who also use the Seal.² Given that the City is the main and most prominent user of the Seal, the City Attorney's Office does not have any concerns regarding the City's common law trademark rights.

To avoid the inconvenience and costs of litigating over trademark rights, some cities have passed ordinances prohibiting the use of city seals or logos for non-official City business. Although the City has passed Council Policy 000-10, which allows for the use of the Seal for non-City business under specific circumstances, the council policy does not prevent people outside the City from using the Seal³. To prevent others from using the Seal, the City would have to either take court action or pass an ordinance prohibiting unauthorized use.

¹ California Business and Professions Code §14210; North Carolina Foundation, Inc. v. Foremost-McKesson, Inc. 92 Cal.App.3d 98 (1979)

² Mallard Creek Industries, Inc. v. Morgan, 56 Cal.App.4th 426 (1997)

³ Upon resolution of the City Council, the Seal may be used for non-City business provided that a disclaimer be prominently affixed to the document displaying the Seal stating that no public funds were expended in the creation or distribution of the document and that the statements contained within the document do not reflect the official position or

2. City Officials and Employees Engaged in Political Activity

Like any other citizen, City officials and employees have the right to engage in political activity. However, their right to conduct such activities as employees or representatives of the City are extremely limited. For example, California Government Code § 3205 prohibits public officials and employees from soliciting political funds or contributions, knowingly, from other officials or employees of that same agency. Furthermore, California Government Code § 3206 prohibits public officials and employees from participating in political activities while in uniform. Cities also have the authority to establish rules/regulations that prohibit or restrict the following: 1) city officials and employees engaging in political activity during working hours; and 2) political activities conducted on city premises.⁴

Internally, the City has passed City Administrative Regulation 5.6, which prohibits the assignment, use or control of City employees for anything but official City business during working hours.

3. Use of City Property for Political Activity

State law specifically prevents the use or the allowance of use of any reproduction of the seal of a local government agency in any campaign literature or mass mailing with the intent to deceive the voters.⁵ If the use of the seal is made in a manner which “creates a misleading, erroneous, or false impression that the document is authorized by a public official,” this would be evidence of an intent to deceive.⁶ Given the City’s existing policy 000-10 relating to the use of the seal, use of the City Seal in campaign literature without the City’s consent, and without the required disclaimer could very well constitute intent to deceive under these statutes. Furthermore, the use of City property for political activity could also be deemed unconstitutional. If there is a determination that no public purpose was advanced by such use of City property, an illegal gift of public funds could result.⁷ Although the courts have liberally interpreted the definition of a public purpose, it would be difficult for the City to justify the allowance of such use, especially if the City limited such use to particular parties or individuals.⁸

Internally, City Administrative Regulation 5.6 prohibits the assignment, use or control of City property for anything but official City business.

4. Conclusion

We recommend that the Council authorize the City Attorney’s office to prepare an ordinance for Council consideration precluding use of the City Seal for anything other than official City business or with City Council approval, to include criminal penalties for violation. We further recommend that the City Attorney’s office be authorized to prepare a proposed revision to Council Policy 000-10 to clarify requirements for the authorized use of the City Seal.

policy of the City. The provisions of this council policy are rather confusing and the City Attorney’s Office recommends revising it so that it more clearly sets forth the policy and procedures for use of the Seal.

⁴ California Government Code §3207

⁵ California Elections Code §18304; California Government Code §34501.5

⁶ California Elections Code §18304(b); California Government Code §34501.5(b).

⁷ California Constitution, Article XVI, Section 6; Redevelopment Agency of San Pablo v. Shepard, 75 Cal.App3d 453 (1977)

⁸ Mannheim v. Superior Court, 3 Cal.3d 678 (1970)