

CITY OF OAKLAND
Office of the City Attorney
Legal Opinion

TO: Marianna Marysheva-Martinez, Assistant City Administrator

CC: Cheryl Taylor, Budget Director

FROM: John Russo, City Attorney

DATE: October 15, 2009

SUBJECT: Legal Questions Related to Annual Report on Travel

I. INTRODUCTION

The City Administrator's Office has asked the following two questions in the context of its annual report to the City Council on travel expenditures.

II. QUESTIONS

- A. Is there currently any legislation / legal guidelines that regulate Mayor's travel?
- B. Can the City Council legally regulate Mayor's travel, such as setting limits on flight class, rental car class, hotel class, etc.?

III. SUMMARY CONCLUSION

- A. The Mayor's travel, if paid for by the City, must meet the general rule for all public expenditures that the expenditure is for public, not private, business. (Penal Code Section 424.) In addition, the Mayor is currently subject to the City Administrator's Administrative Instruction 120, "Travel on City Business."
- B. City Council cannot interfere with or encroach upon the Mayor's exercise of his powers and his reasonable determination of the means to exercise those powers and perform his duties. In other words, the City Council can't decide which trips he takes, but the budget can limit the total amount

that is reimbursable. The City Council may also set up different City-wide reimbursement rates if it disagrees with AI 120. But such rates cannot prevent the Mayor from traveling.

IV. LEGAL ANALYSIS

A. Is there currently any legislation / legal guidelines that regulate Mayor's travel?

The Mayor's travel, if paid for by the City, must meet the general rule for all public expenditures that the expenditure is for public, not private, business. (Penal Code Section 424.) In addition, the Mayor is currently subject to the City Administrator's Administrative Instruction 120, "Travel on City Business."

Under his power to control and administer the financial affairs of the City, the City Administrator has established rules (AI 120) for travel reimbursement for all City officials and employees, including the Mayor and City Council.

Section 504. Duties. The City Administrator shall have the power and it shall be his duty:

.....

(e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.

.....

(k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.

The City Controller issues checks reimbursing expenses for travel for all City officials and employees and the City Controller is under the jurisdiction of the City Administrator. Therefore, the City Administrator's Administrative Instructions can establish for the City Controller what can or cannot be reimbursed City-wide.

Administrative Instruction 120 already does this for all City officials and employees. It specifies the reimbursement rate and the type of travel that the City will reimburse.

B. Can the City Council legally regulate Mayor's travel, such as setting limits on flight class, rental car class, hotel class, etc.?

Generally, yes. Charter section 504 also provides that City Administrator is also "(a) To execute and enforce all laws and ordinances and policies of the Council" So, whatever Administrative Instructions the City Administrator develops cannot conflict with ordinances and policies established by the City Council.

For example, the City Council has the express power to establish the budget for the Mayor's office as well as all other offices of the city. The budget already establishes an amount for personnel expenses and another amount for non personnel related expenses for each office. This is done pursuant to City Council's express powers under the charter. This gives the Mayor the discretion to determine where he wants to travel and how often so long as he stays within his budget. The City Council also has a policy requiring Council approval of certain expenditure of personnel funds for nonpersonnel costs. Because this is budget territory, this policy can constrain the Mayor as well.

In the context of the budget, the City Council also passed Resolution No. 81648. This resolution, in essence, places a moratorium on all City expenditures for travel City-wide unless approved personally by the City Administrator.

Neither the Budget nor Resolution No. 81648 on its face conflict with AI 120.

The final caveat is that the City Council cannot interfere with or encroach upon the Mayor's exercise of his powers and his reasonable determination of the means to exercise those powers and perform his duties.

City Charter section 305 establishes the Mayor's functions, powers and duties including but not limited to

- (1) "providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity",
- (2) encouraging programs for the physical, economic, social and cultural development of the City,
- (3) actively promoting economic development to broaden and strengthen the commercial and employment base of the City,
- (4) serving as the ceremonial head of the City, and
- (5) providing community leadership

Legal authorities consistently say that City officers may use any "lawful and reasonable means" to carry out their express powers and any doubt as to the propriety of the means should be resolved in favor of the City officers.

In general, powers given to municipal corporations include the further power to employ such modes of procedure as are

appropriate and necessary for their effective exercise. The delegation of power to municipal corporations, without providing the mode for carrying such power into effect, impliedly gives them the right to select lawful and reasonable means whereby that power is to be carried out. All doubts as to the propriety of means used in the exercise of an undoubted municipal power should be resolved in favor of the municipality, where there is no abuse of power or discretion. A municipal corporation may act through such agencies as the legislature directs. (Ravettino v. City of San Diego, 70 Cal.App.2d 37,47 (1945) (City Charter's express power to operate a port included the implied authority to operate a power crane, and the Charter did not need to expressly specify the operation of power cranes for the municipality to have the authority to operate power cranes at the port.)

When the Charter confers express powers on the Council, it has the "discretion" and "wide latitude" to choose the legal means to exercise the powers.

"If power is statutorily conferred on a municipal corporation and the law is silent as to the mode of exercising such power, the corporate authorities are necessarily clothed with a reasonable discretion to determine the manner in which such powers shall be exercised; all the reasonable methods of executing such power are inferred." (McQuillin Mun. Corp. § 10.32.)

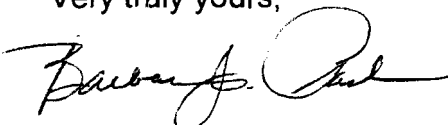
"When the authority to exercise the power appears, wide latitude is allowed in its exercise and, unless some abuse of power or a violation of organic or fundamental right results, it will be upheld." (Id.) "If the method for exercising a municipal power is not specifically prescribed, the mode or means by which a municipality may exercise powers granted by the legislature will not be strictly construed." (Id.)

In other words, the City Council cannot decide which trips the Mayor takes, but the budget can limit the total amount that is reimbursable. The City Council may also set up different City-wide reimbursement rates if it disagrees with AI 120. Such reimbursement rates must be reasonable under current market conditions. But such rates cannot prevent the Mayor from traveling.

V. CONCLUSION

The Mayor's travel expenses paid for by the City must meet the general rule for all public expenditures that the expenditure is for public, not private, business. In addition, the Mayor is currently subject to the City Administrator's Administrative Instruction 120, "Travel on City Business." City Council can create City-wide policies on the reimbursement of travel expenses but cannot interfere with or encroach upon the Mayor's exercise of his powers and his reasonable determination of the means to exercise those powers and perform his duties.

Very truly yours,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Mark T. Morodomi