MEMORANDUM OF LAW

DATE: May 24, 1995

TO: Debbie Van Wanseele, Deputy Director, General Services Department

FROM: City Attorney

SUBJECT: Addendum to the April 11, 1995, Memorandum of Law Regarding the Application of the Private Express Statutes to City Interoffice Mail Delivery

In a memorandum of law dated April 11, 1995, our office opined that the Private Express Statutes (18 U.S.C. Section 1694 et seq.), which creates a postal monopoly for the United States Postal Service, does not apply to the City interoffice mail distribution. This monopoly is not applicable to the City because of the "letters-of-the-carrier" and "carriage prior or subsequent to mailing" exceptions. Our office correctly concluded that both exceptions apply to the City interoffice mail distribution. However, as it relates to the "letters-of-the-carrier" exception, our research did not include analysis as to who is required to deliver mail that qualifies for the "letters-of-the-carrier" exception. In light of Regents of Univ. of Cal. v. Public Empl. Rel. Bd., 485 U.S. 589, 594 (1988), the City would be precluded from contracting its interoffice mail distribution for inner-office mail that qualifies for the "letters-of-the-carrier" exception.

In order to qualify for the letters-of-the-carrier exception, the letters carried must be related to the current business of the carrier. In Regents, 485 U.S. at 601-602, the Supreme Court focused on the "business related" element, but there was dicta that referred to 39 Code of Federal Regulations ("C.F.R.") Section 310.3(b) (1994), which indicates in part that " ┌if the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer or employee of such person . . . . " (Emphasis added). An officer or employee for the purposes of this exception is defined in 39 C.F.R. Section 310.3(b)(2) (1994). Among other things, the statute requires that the employee carrying the letters, is employed a "substantial time," that the employee does not carry mail for other senders, and that the employee

receives all the benefits of a regular employee such as salary, annual vacation time and health benefits.

Based upon further review, the City may contract for delivery of mail that qualifies for the "carriage prior or subsequent to mailing" exception. This is mail that has already been postmarked and received and may be distributed internally pursuant to the "carriage prior or subsequent to mailing" exception. The inner-office mail must be delivered by an officer or employee of the City. Consequently, this mail delivery may not be contracted.

Please call if I can be of further assistance.

JOHN W. WITT, City Attorney
By
Elmer L. Heap, Jr.
Deputy City Attorney

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