MEMORANDUM OF LAW

DATE: March 5, 1991

TO: Liz Whitted-Dawson, Financial Management Department

FROM: City Attorney

SUBJECT: Fire Department - Biennial Inspection Terminal Program

We received your copy of the Biennial Inspection Terminal (BIT) application and California Vehicle Code section 34506. You wanted information on the ramifications for not complying with this legislation and also the likelihood of being fined or prosecuted for non-compliance.

1. Ramifications for Non-Compliance

First, the California Vehicle Code ("CVC") section 34506 you sent has been superseded. I am enclosing the current language of that statute. (It adds only information relevant to school buses.) New section 34506 states that "┌iσt is a misdemeanor to fail to comply . . ." with the listed rules or regulations. As regards sanctions for misdemeanors, section 19 of the California Penal Code states in relevant part that "every offense declared to be a misdemeanor is punishable by . . . a fine not exceeding one thousand dollars ($1,000). . . ." Section 19.2 of the California Penal Code states that "┌iσn no case shall any person sentenced to confinement . . . on conviction of a misdemeanor . . . be committed for a period in excess of one year. . . ."

In addition, CVC section 34505.6 states that:

> (a) Upon determining that a motor carrier operating any vehicle described in subdivision (a), (b), (c), (d), (e), (f), or (g) of Section 34500 has either (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations
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> contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an
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> imminent danger to public safety or constitutes such a consistent failure as

to justify a re- commendation to the Public Utilities Commission or the Interstate Commerce Commission, or (2) failed to comply with the pull notice system or periodic report requirements required by Section 1808.1, the department shall recommend to the Public Utilities Commission or the Interstate Commerce Commission that the carrier's operating authority be suspended, denied, or revoked, whichever is appropriate. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's operating authority by the California Public Utilities Commission or the Interstate Commerce Commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a).

For your further information, CVC section 34501.12 titled "Inspection of terminals" defines "motor carrier" and delineates a motor carrier's responsibilities as regards applications for the

BIT inspection. Section 34501.12(d)(1) lists the fees required to be submitted with application forms and states that, "╒fσederal, state, and local public entities are exempt from the fee requirements of this section."

2. Likelihood of Being Fined or Prosecuted for Non-Compliance

When you requested this information, we assumed you were referring to the likelihood of The City of San Diego in general, or the Fire Department in particular, being fined or prosecuted for non-compliance. Our answer is that The City of San Diego or the Fire Department are not exempt from regulation by the California Highway Patrol or the courts simply because of public agency status. Therefore, if the City or the Fire Department either fails to comply with the required inspection program or fails any of the inspections themselves, the ramifications will be the same as for any other company or entity found to be in violation.

It is our recommendation that the City and Fire Department comply in all ways necessary with the requirements of the law as stated in relevant code sections regarding this inspection program.

We will be glad to assist you further if you desire.

JOHN W. WITT, City Attorney
By
Mary Kay Jackson
Deputy City Attorney

MKJ:mb:518(x043.2)
Attachment
ML-91-19