MEMORANDUM OF LAW

DATE: October 28, 1985

TO: Coleman Conrad, Deputy City Manager

FROM: City Attorney

SUBJECT: Requirement to Contract With Respect to Emergency Medical Services

You have detailed several requests from the County of San Diego Office of Emergency Medical Services to contract with the City of San Diego for the provision and regulation of emergency medical services (hereafter EMS). In light of this request, you ask whether you have a legal obligation to enter such an agreement.

We understand from the correspondence that the County of San Diego construes California Health and Safety Code section 1797 et seq. as mandating such an agreement. We have carefully reviewed this legislation and do not agree that agreements are required

between the County and the City of San Diego. Our analysis follows.

If a matter is a "municipal affair" a charter city may regulate the subject even if conflicts arise with state law. California Constitution, Article XI, sections 5 and 7. There is however, no litmus test to precisely ascertain what is a municipal affair.

> In exercising the judicial function of deciding whether a matter is a municipal affair or of statewide concern, the courts will of course give great weight to the pur-
> pose of the Legislature in enacting general laws which disclose an intent to preempt the field to the exclusion of local regulation (see Ex parte Daniels (1920) 183 Cal. 636, 639-640 (192 P. 442, 21 A.L.R. 1172)), and it may well occur that in some cases the factors which influenced the Legislature to adopt the general laws may likewise lead the courts to
>
> the conclusion that the matter is of statewide rather than merely local concern. However, the fact, standing alone, that the Legislature

> has attempted to deal with a particular sub-
> ject on a statewide basis is not determinative
> of the issue as between state and municipal
> affairs, nor does it impair the constitutional
> authority of a home rule city or county to
> enact and enforce its own regulations to the
> exclusion of general laws if the subject is
> held by the courts to be a municipal affair
> rather than of statewide concern; stated
> otherwise, the Legislature is empowered
> neither to determine what constitutes a
> municipal affair nor to change such an affair
> into a matter of statewide concern.
> Bishop v. City of San Jose
> 1 Cal.3d 56, 63 (1969)

In examining both the subject matter and legislative intent behind Health and Safety Code section 1797 et seq., we do not believe this legislation portrays a comprehensive scheme of establishing, regulating and supervising EMS programs.

As Bishop, supra holds, considerable weight is given to legislative intent. In the legislation under review, there are three (3) separate statements of legislative intent expressed as follows:

Sec. 1797.2. Legislative intent

It is the intent of the Legislature to main-
tain and promote the development of EMT-P

paramedic programs where appropriate through-
out the state and to initiate EMT-II limited

advanced life support programs only where

geography, population density, and resources

would not make the establishment of a paramed-
ic program feasible.

Sec. 1797.5 Legislative intent; state policy

It is the intent of the Legislature to pro-
mote the development, accessibility, and pro-
vision of emergency medical services to the

people of the State of California.

Further, it is the policy of the State of

California that people shall be encouraged and

trained to assist others at the scene of a

medical emergency. Local governments, agen-
cies, and other organizations shall be

encouraged to offer training in cardio-
pulmonary resuscitation and lifesaving first

aid techniques so that people may be

adequately trained, prepared, and encouraged to assist others immediately.

Sec. 1797.6 Policy of state; legislative intent

(a) It is the policy of the State of California to ensure the provision of effective and efficient emergency medical care. The Legislature finds and declares that achieving this policy has been hindered by the confusion and concern in the 58 counties resulting from the United States Supreme Court's holding in Community Communications Company, Inc. v. City of Boulder, Colorado, 455 U.S. 40, 70 L.Ed.2d 810, 102 S.Ct. 835, regarding local governmental liability under federal antitrust laws.

(b) It is the intent of the Legislature in enacting this section and Sections 1797.85 and 1797.224 to prescribe and exercise the degree of state direction and supervision over emergency medical services as will provide for state action immunity under federal antitrust laws for activities undertaken by local

governmental entities in carrying out their

prescribed functions under this division.

Hence the primary purpose is to "promote" the development of EMS programs "where appropriate" and secondly to provide a legislative basis for the "Parker exemption" under the Sherman Act (15 USC 1) construed in Community Communications Company, Inc. v. City of Boulder, Colorado, 455 U.S. 40, 70 L.Ed.2d 810, 102 S.Ct. 835 (1982). There is no stated legislative intent to preoccupy the field and to place uniform rules on all EMS programs. In fact as subsequent sections detail, uniformity is not sought. Hence section 1797.3 specifically provides that "additional training standards" are not precluded by local

agencies. While the sections clearly speak to a baseline of service and training, local agencies can establish more stringent standards.

The legislative intent not to preoccupy the field is further evidenced by the permissive rather than mandatory words in the following two (2) sections.

Sec. 1797.200. County development of

emergency medical services

program; designation of agency

Each county may develop an emergency medical

services program. Each county developing such a program shall designate a local EMS agency which shall be the county health department, an agency established and operated by the county, an entity with which the county con-
tracts for the purposes of local emergency medical services administration, or a joint powers agency created for the administration of emergency medical services by agreement between counties or cities and counties pur-
suant to the provisions of Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Sec. 1797.201. Contracts with cities or fire districts for prehospital emergency medical services.

Upon the request of a city or fire district that contracted for or provided, as of June 1, 1980, prehospital emergency medical ser-
vices, a county shall enter into a written agreement with the city or fire district regarding the provision of prehospital emer-
gency medical services for that city or fire

district. Until such time that an agreement is reached, prehospital emergency medical services shall be continued at not less than the existing level, and the administration of prehospital EMS by cities and fire districts presently providing such services shall be retained by those cites and fire districts, except the level of prehospital EMS may be reduced where the city council, or the

governing body of a fire district, pursuant to a public hearing, determines that the reduction is necessary.

Notwithstanding any provision of this section the provisions of Chapter 5 (commencing with Section 1798) shall apply. (Emphasis added.)

Section 1797.201 clearly contemplates a "request" by a local agency before a service contract is formulated and that cities, such as San Diego, currently providing EMS shall retain the administration of these services. San Diego has provided paramedic service since approval of Proposition C on the November 8, 1977 ballot. This further supports the purpose of the

legisla-
tion as providing minimum standards but not occupying the field to the exclusion of currently functioning municipal services.

In addition to legislative intent, the trend of California preemption cases has focused on whether there is a particular local interest to be served. Defining the level and scope of EMS services we believe is a significant local interest. The peculiar needs of a locality must be assessed and the budgetary implications of the number and types of units must be addressed. This clearly may vary from city to city and does not admit of one uniform level to be controlled from a central source.

> The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption. (See e.g., Galvan v. Superior Court, supra, 70 Cal.2d at pp. 862-864.) Here we deal with an ordinance regulating the use of streets and sidewalks, one both particularly within the realm of local government and one where conditions peculiar to the locality may differ from place

> to place. The problem of the "captive" viewer
> may be quite different in Los Angeles County
> than it is in Mono or in San Francisco.
> Glick v. County of Los Angeles
> 93 Cal.App.3d 121, 133 (1979)

That the court has upheld local regulations on news racks (Glick) and gun registration (Galvin) against preemption claims

strengthens our belief that EMS programs should be allowed to differ based on the conditions peculiar to the locality.

The one-page memo from Deputy County Counsel Arne Hanson is not contrary authority since it speaks of an administrative regulation requiring approved service providers to have written agreements. California Administrative Code, Title 22, section 100161(b). Yet the roots of this regulation are the minimum standard sections of the legislation and not any statutory requirement for an agreement.

CONCLUSION

Whether state legislation was meant to preempt the field must be judged from the intent of the legislation. Given the intent of the legislation as explicitly expressed and the permissive language used with respect to existing EMS programs, we cannot say that Health and Safety Code section 1797 et seq. is so

perva-
sive as to impose inflexible standards, through agreements, on

charter cities. Hence a written agreement with the county is not

compelled, but may be entered into to obtain contractual
bene-
fits.

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By

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TB:js:342(x043.2)

cc Susan Swanson,

Paramedic Coordinator

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