

INTRADEPARTMENTAL CORRESPONDENCE

BPC # 09-0088

February 9, 2009

16.1

WJB #08-0046

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: CITY COUNCIL MOTION RELATIVE TO PHOTO RED LIGHT,
COUNCIL FILE NO. 07-1202-S4

RECOMMENDED ACTIONS

1. That the Board REVIEW and APPROVE this report in response to the City Council Motion relative to Photo Red Light, Council File No. 07-1202-S4.
2. That the Board TRANSMIT the report concurrently to the Public Safety and Transportation Committees.

DISCUSSION

On October 1, 2008, Councilmembers Dennis Zine and Wendy Greuel, requested that the Los Angeles City Attorney's Office, Department of Transportation and the Police Department report to the Public Safety and Transportation Committees on the possible impact of a pending California Supreme Court Case (*In re: Red Light Photo Enforcement Cases, S165425*) involving a class-action suit relative to contracts with private Photo Red Light (PRL) companies. A report on the following issues was requested:

- An analysis of the Court's anticipated action(s) in this case and how it will affect the City and how the City's PRL contract can be amended or re-written to address any issues raised in the litigation; and,
- A contingency plan, including new procedures to be in compliance with the law should the appeal prevail, so that the City will be prepared to keep collecting related fines under the new rules without suffering any delays.

The City's PRL Program has been in existence since December 2000, when it designated Lockheed Martin as the contractor responsible for operating the program, and in return, the City agreed to compensate the contractor for each paid citation. In September 2001, the contract that Lockheed Martin agreed to was sold to Affiliated Computer Systems (ACS), thus making ACS the new PRL contractor.

On January 1, 2004, when the California Vehicle Code (CVC) was amended to prohibit new contingency fee contracts, the City was in the middle of a contingency fee contract with ACS. Even though the CVC amendment did not affect existing contracts, the City in agreement with ACS, elected to amend the current contract and switched the terms to a flat-rate fee on June 15, 2004, which continued in effect until the contract's expiration date of June 2005. At that time, the City issued a Request for Proposal and entered into a flat-rate fee contract with its current PRL contractor, Nestor Traffic Systems, on November 18, 2005.

On June 13, 2008, the Fourth District Court of Appeals filed a ruling on five coordinated PRL cases. These cases were filed individually, over the course of several years, ranging from June 2001 to as recent as June 2005. Although the cases are distinct in nature, they all in some manner challenge the legality of contingency fee contracts. In September 2008, the California Supreme Court agreed to review the appeal of the PRL cases wherein ACS along with several municipalities were listed as defendants. However, the City was not named as a defendant in any of the cases reviewed.

ANALYSIS

Given the fact that the City had a contingent fee contract with ACS for approximately three and one-half years, a State Supreme Court ruling in this matter could indirectly impact the City of Los Angeles. A judgment in favor of the plaintiffs could set a legal precedent that may invite action against the City (i.e., a petition to overturn convictions and/or refund fines to those issued citations under the contingency fee based contract).

However, in four of the five cases (*Glickman, C.L. Trustees, Cook, and Buys*), the plaintiffs stipulated to an *in limine* ruling by the trial court and completely dismissed the governmental defendants. As such, the municipalities were removed from the lawsuit and allowed for the plaintiffs to seek restitution from ACS only. Neither the City nor any other municipality will be impacted by the outcome of the appeal in these cases, as they only concern private companies who administered such contracts.

The last of the five cases (*Leonte*) involves a municipal defendant, the City of West Hollywood. Should this case prevail on appeal, it could impact the City and any other city that had a contingent fee contract. The arguments in this case, however, are so poor and the evidence so weak that the Court cited its authority to waive the points as "meritless" and to "pass them without further consideration." It appears that this case has been carried to appeal only through its group association with the other four cases. It is unlikely that this case will prevail on appeal and therefore does not constitute a threat to the City.

After careful review of the trial court and appellate court rulings, the arguments offered by the plaintiffs and prior/existing law, it has been determined that this lawsuit does not present a likely threat to the City and should be of minimal concern.

Since the City does not currently engage in a contingency fee contract, there are no contractual amendments or changes necessary to the current contract with Nestor Traffic Systems. Even if this appeal were to prevail, due to the Court of Appeals, Fourth Appellate District appellate ruling dated June 13, 2008 (attachment), it would not affect the City's current operation or disrupt the collection of related fines.

CONTINGENCY PLAN

In the unlikely event that the *Leonte* appeal should prevail, a lawsuit could arise against the City, citing *Leonte* as a precedent, thus seeking a refund of traffic fines. The City would engage in litigation and seek to demonstrate a dissimilar fact pattern in comparison with *Leonte*.

Failure to successfully litigate this issue could result in the City refunding all or part of the PRL fines it collected while engaged in the contingent fee contract with ACS. Again, it should be reiterated that this contingency is unlikely and should not be a major concern.

In completing this report, the City Attorney's Office was consulted and asked to provide an opinion on the Analysis and Contingency Plan offered as recommendations. City Attorney Debra Gonzales opined that with her limited review on the facts of the cases, she was not convinced that the City could be sued for actions that occurred prior to 2005. She further stated that she was not prepared to provide a complete brief on the current litigation but that her office would be prepared to respond to Councilman Zine's Motion as such time as the matter is heard in Council Committee.

If you have any questions regarding this matter, please contact Captain Todd Chamberlain, Commanding Officer, Emergency Operations Division, at (213) 847-1600.

Respectfully,

A handwritten signature in black ink, appearing to read "William J. Bratton". The signature is fluid and cursive, with a large, sweeping flourish at the end.

WILLIAM J. BRATTON
Chief of Police

Attachments

FACT SHEET

CITY COUCIL MOTION RELATIVE TO PHOTO RED LIGHT

COUNCIL FILE NO. 07-1202-S4

February 9, 2009

Background

On October 1, 2008, Councilmembers Dennis Zine and Wendy Greuel, requested that the Los Angeles City Attorney's Office, Los Angeles Department of Transportation and the Department report to the Public Safety and Transportation Committees on the possible impact of a pending California Supreme Court Case (In re: Red Light Photo Enforcement Cases, S165425) involving a class action suit relative to contracts with private Photo Red Light (PRL) companies. They requested a report on the following issues:

- An analysis of the Court's anticipated action(s) in this case and how it will affect the City; and how the City's PRL contract can be amended or re-written to address any issues raised in the litigation; and.
- A contingency plan, including new procedures to be in compliance with the law should the appeal prevail, so that the City will be prepared to keep collecting related fines under the new rules without suffering any delays.

SUMMARY OF ARGUMENTS AND JUDGEMENTS

The appeal judgment concerns five lawsuits falling into basically two categories of argumentation:

ARGUMENT 1: Contingent Fee contracts are a violation of the "Unfair Competition Law" (UCL).

- CASES USING THIS ARGUMENT: *Glickman, C.L. Trustees, Cook, and Buys*
- DEFENDANT: Affiliated Computer Systems (ACS).
 - Cites the "UCL," referring to Section 17200 of the *California Business and Professions Code*, which generally prohibits unlawful, unfair or fraudulent business practices.
 - Contingency fee contracts are against public policy and void because they raised inherent conflicts of interest and had the potential to cause corruption.
 - Seeks restitution for PRL fines.

Summary of Judgment for Argument 1:

DISMISSAL OF MUNICIPALITIES: This case originally included ACS and several municipalities as defendants (ie. the City of San Diego, and the City and County of San Francisco). The trial court ruled that the plaintiffs are NOT entitled to a refund from the municipalities for the fines they paid. California law requires that a conviction be overturned before a criminal defendant can sue a city for a refund of their criminal penalties. The plaintiff's only option is to seek *restitution* from ACS.

FACT SHEET

CITY COUCIL MOTION RELATIVE TO PHOTO RED LIGHT

COUNCIL FILE NO. 07-1202-S4

February 9, 2009

In light of this ruling, the plaintiffs dismissed the various municipalities and continued legal action against ACS only. This ruling is not a matter of appeal and therefore the City of Los Angeles can be fairly confident that it would be insulated from financial indemnity in the same way as the above municipalities.

ARGUMENT 2: The City of West Hollywood's Photo Red Light (PRL) program was conducted in a manner that constitutes a *wasteful and illegal expenditure of public funds*.

- CASES USING THIS ARGUMENT: Only the *Leonte* case uses this argument (referred to also by the name of the second plaintiff in the case, *Richard Best*).
- DEFENDANT: The City of West Hollywood.
 - Cites *Code of Civil Procedure* Section 526(a), which authorizes an injunction against a person or municipality.
 - Calls for a court order to bring a halt to the City's PRL program.
 - Claims that the following is evidence that the PRL program was conducted in a *wasteful* manner:
 - Failure to issue 30-Day warning notices at some intersections
 - The PRL systems alleged use of "speed traps" (as defined by 40801 CVC).
 - ACS's access to confidential DMV information is a violation of privacy rights.
 - The contingency fee compensation structure was illegal.
 - A separate motion, "*Petition for Writ of Mandamus*," asserts that the City of West Hollywood has a "clear and present" public duty to overturn PRL convictions, refund PRL fines, and halt PRL operations. The motion offered little to no evidence to support this claim.

Summary of Judgment for Argument 2:

DISMISSAL OF ACS: This lawsuit originally included ACS as a defendant for illegally operating an automated enforcement program. The trial court dismissed ACS from this action, citing that the City of West Hollywood retained oversight and control of the program and was therefore the program operator. The Second District and Fourth District Appellate Court affirmed this ruling.

The action therefore remained against the City of West Hollywood. Two issues were contested by the plaintiffs and addressed by the Fourth Appellate District:

1. The issue of *taxpayer waste*; and
2. The alleged "*public duty*" to overturn PRL convictions, halt PRL functions and refund PRL fines. (*Writ of Mandamus*).

1. **Taxpayer Waste:** The appellate court affirmed the original ruling that the City of West Hollywood's PRL program was authorized by law and generated revenue, and was

FACT SHEET

CITY COUCL MOTION RELATIVE TO PHOTO RED LIGHT COUNCIL FILE NO. 07-1202-S4

February 9, 2009

therefore not wasteful. The appellate court cited several legal precedents to support this, including a case (*Coshov vs. City of Escondido*) where courts were admonished not to become involved in disputes that are primarily political in nature.

2. *Writ of Mandamus*: The appellate court affirmed the trial courts summary judgment against the Plaintiffs. They ruled that the Plaintiffs had no standing to bring the action as neither of them had received a citation from the City of West Hollywood.

The court added that the plaintiffs had made "no showing" that the City of West Hollywood had any "public duty" to overturn PRL convictions, halt PRL functions, or refund PRL fines.

The court further criticized the plaintiffs in this case (*Best and Leonte*) for "not developing any particular argument" and "not citing any supporting legal authority." The court cited legal precedent authorizing it to treat the plaintiffs points as "waived, meritless and pass them without further consideration." Nevertheless, the court still addressed the petition "to the extent possible." It is extremely doubtful that this action will prevail on appeal.

Recommendations

In the unlikely event that the *Leonte* appeal should prevail, a law suit could arise against the City of Los Angeles, citing *Leonte* as a precedent, and seeking a refund of traffic fines. The City would engage in litigation and seek to demonstrate a dissimilar fact pattern in comparison with *Leonte*.

Failure to successfully litigate this issue could result in the City refunding all or part of the PRL fines it collected while engaged in the contingent fee contract with ACS. Again, however, it should be reiterated that this contingency is unlikely and should not be a major concern.

Prepared by:
Emergency Operations Division

