

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Chief Anthony Batts, Oakland Police Department

FROM: John A. Russo, City Attorney 

**CC: Oakland Athletics, c/o David Rinetti,
V.P. of Stadium Operations
Deena McClain, Executive Director,
Oakland-Alameda County Coliseum Authority
Richard Winnie, Alameda County Counsel
Dan Lindheim, City Administrator**

DATE: April 27, 2010

RE: Oakland A's Policy Restricting Certain Signs from Display at the Oakland Coliseum

Chief Batts –

During the April 7 A's game, Coliseum security removed a fan from the stadium because he refused to put away a sign that was critical of team ownership. The team claims it "has had a policy in place for more than 30 years banning any signs with negative personal messages" and that such policy prohibits signs in "bad taste [or] aimed at a specific person."¹ I understand that OPD assisted Coliseum security in the removal of this fan from the stadium.

Federal law makes it clear that the A's sign policy is unconstitutional, and the City could potentially be liable for damages as a result of the enforcement of this policy. I advise you to instruct your officers assigned to Coliseum security to refuse to participate in any activity that restricts the free speech of members of the public.

The Coliseum – like any other publicly owned stadium - is a "limited public forum" for the purposes of First Amendment free speech analysis.² Since it is a public forum, any restrictions on speech may not be based on the subject matter of the sign, unless justified by a "compelling

¹ New York Daily News, Mark Feinsand, April 21, 2010

² *James v. City of Long Beach*, 18 F. Supp.2d 1078 (1998); *Stewart v. District of Columbia*, 863 F.2d 1013 (1988)

state interest."³ In other words, the A's may not impose restrictions against personal attacks or bad taste - unless the restrictions are explained by a legally compelling reason.

The A's have not articulated a compelling reason for their sign policy.

In Stewart v. District of Columbia, the owners of RFK stadium were sued over their policy requiring that all banners be "related to the event." The owners argued that the reason for the policy was to prevent offending the fans, team ownership, tenants, and the NFL; the court held that these interests were not compelling enough to justify the policy.⁴

In Aubrey v. City of Cincinnati, the Cincinnati Reds had a policy of allowing only signs that were in "good taste." The court struck this policy down because it was too vague and overbroad - and because it gave stadium security too much discretion in deciding what constitutes "good taste." In Aubrey, the Reds removed a fan from the stadium for holding up a "John 3:16" sign, and the court awarded damages to the fan because his constitutional rights were violated.⁵

We believe the A's do have a compelling interest in restricting signs that incite violence or imminent lawless action, make a true threat of harm, contain obscenity, or could otherwise cause harm to members of the public. In this case, the sign criticizing team ownership did none of these things. The sign said, "Lew Wolff hates Oakland." Whether or not Mr. Wolff hates Oakland is not relevant. Either way, the A's may not prohibit fans from speaking their minds about his ownership of the team.

The City of Oakland can potentially be held liable for the A's sign policy if OPD cooperates in its enforcement. In Aubrey, Cincinnati police officers had some responsibility for enforcing the team's regulations in the stadium, and they helped remove the fan who held up the "John 3:16" sign. Because of this relationship between the police and stadium security, the court held the City responsible.

To avoid any liability of the City in future situations at the Coliseum, I strongly urge you to instruct your officers to refuse to enforce the A's unconstitutional sign policy. We hope to work with the A's on crafting a policy that will protect free speech while prohibiting true threats of harm, obstruction of other fans from watching the game, incitement of violence, and obscenity.

If you have any questions, please feel free to contact me directly. Thank you for your time and attention to this matter.

³ Krishna v. New Jersey Sports and Exposition Authority, 691 F.2d 15 (1982); James v. City of Long Beach, 18 F. Supp.2d 1078 (1998)

⁴ Stewart v. District of Columbia, 863 F.2d 1013 (1988).

⁵ Aubrey v. City of Cincinnati, 815 F.Supp. 1100, 1006 (1993)