

CITY OF OAKLAND



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December 5, 2000

FINANCE AND MANAGEMENT COMMITTEE Oakland, California

Re: City Attorney Opinion Concerning Legal Basis for Recovery of Payments Made to Sanjiv Handa (doing business as "Information Center")

Chairperson Spees and Members of the Committee:

On October 31, 2000, the City Manager delivered a report to the Community Economic Development Committee regarding payments made earlier this year to Mr. Sanjiv Handa (doing business as "Information Center") in relation to services and deliverables provided to the City. Pursuant to Council direction, this opinion addresses the City's legal position should it attempt to recover the payments.

Issue

Whether the City may recover payments made to Mr. Handa, pursuant to an alleged services contract, if City contracting procedures were not followed.

Brief Answer

No, the City is not likely to prevail in such an action against Mr. Handa. The City Manager's Office has concluded that an agreement was reached, and that Mr. Handa performed all services under the agreement. Consequently, the City Manager's Office paid Mr. Handa. Although Mr. Handa might have had difficulty enforcing the agreement and compelling payment by the City; however, without some evidence of fraud, it is highly unlikely that the City would prevail in action to recover payment solely on the basis that City contracting procedures were not followed.

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Background

According to the City Manager's Finance Committee Report dated October 31, 2000, Mr. Handa submitted invoices to the City for services and publications prepared pursuant to verbal agreements reached sometime in 1995. The invoices, dated February 1, 1998, charged \$14,500 for Oakland Wire services (a one-year pilot program for information dissemination system, and \$7,500 for the Oakland Super Book (a comprehensive directory of City, County and non-profit community services). The City had no payment history or other billings from Mr. Handa in its files at the time the investigation into the payment claim was conducted.

The City Manager's Office concluded that a City official(s) entered into one or two verbal agreements with Mr. Handa in 1995, that Mr. Handa had provided the agreed upon deliverables to the City and that Mr. Handa was entitled to payment. Payment(s) were issued to Mr. Handa in July of this year.

Analysis

In California a verbal agreement for services is legally enforceable to the extent the services are performed within one year of the agreement.¹ Additional requirements for City of Oakland contracts are set forth in the City Charter, City ordinances and City administrative instructions. Generally speaking, Oakland requires services contracts to be in writing and may even have required City Council approval in this instance. For the purposes of this opinion, the City Attorney assumes that City contracting procedures were not followed.

Under California case law, the general rule is public agency contracts must be approved and executed in accord with the contracting laws, rules or regulations applicable to the public agency, or the contract is unenforceable as against public policy. The purpose of this rule is to assure that the public trust is not committed or expended without the appropriate oversight of the public officials elected or appointed to perform this task.² (See, e.g., Seymour v. State of California, 156 Cal.App.3d. 200 (1984).) This line of cases suggests that Mr. Handa's claim for payment may have been legally unenforceable.

¹ Civil Code §1624(a)(1). The California Statute of Frauds specifies the circumstances under which a writing is required to create an enforceable or valid contract. (See, Civil Code §1624.)

² For example, quantum meruit, a long-standing legal basis upon which to obtain payment for services rendered without a written agreement or in the context of a void agreement, is not available to contractors when asserting contract claims against public agencies. (See, Nash v. City of Los Angeles, 78 C.A. 516 (1926); and, California Construction Contracts and Disputes, CEB, 2nd Ed. 1990.)

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On the other hand, courts are also concerned with the facts surrounding the agreement – the representations of the public officials and whether it was reasonable for the claimant to rely on the representations - and have developed other theories of recovery for claimants such as waiver. (See, e.g., Shea-Kaiser-Lockheed-Healy v. Department of Water & Power, 73 Cal.App.3d 679 (1977) (public agency required to pay contractor for services and materials not identified in contract), and Weeshoff Construction Co. v. Los Angeles County Flood Control District, 88 Cal.App.3d 579 (1979) (county inspector's conduct approving work effectively waived the county's written contract requirement).) Hence, there are cases in which claimants have collected even though public agency contracting procedures were apparently not followed.

In this case, the City Manager's Office has concluded that Mr. Handa was directed to perform certain services by City official(s) sometime in 1997 concerning the preparation of a directory and other publications, that he proceeded to perform the services with the understanding that he had an agreement with the City and, on that basis, the City paid him. On these facts, it is unlikely that the City would recover the money paid to Mr. Handa solely on contracting process grounds. Barring evidence of fraud, the City will have difficulty pressing a claim against Mr. Handa to recover the payments.

Conclusion

In light of the high likelihood that the City would not prevail in an action to recover payments, the City Attorney recommends that the City not initiate legal action against Mr. Handa.

Very truly yours,

JOHN A. RUSSO
City Attorney

Attorney assigned:
Doryanna M. Moreno

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