

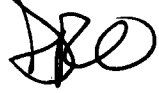


MEMORANDUM

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DATE: April 2, 2008

TO: Vicki Mayes, City Manager

FROM: Dave Olsen, City Attorney 

REGARDING: Rescinding Automobile Allowances for Specifically-Identified City Employees.

CC: Mayor Tobler
Councilmen Anderson, Chandler, Pacini and Strickland
Pam Malmstrom, City Clerk

You have asked for a written opinion regarding:

Whether or not the City Council may, during the current budget process, eliminate the automobile allowances provided to certain City employees.

- I. Short Answer: The decision to eliminate the automobile allowances provided to certain City employees must be based upon the facts and circumstances under which that employee was hired. If the promise of an auto allowance was made either orally or in writing as a term of employment, and the employee can state that the decision to accept the offer of employment was based in part on the offer of an auto allowance, the City is obligated to continue to pay the auto allowance or compensate the employee for any damages sustained by accepting the employment.
- II. Historical Summary: A member of the City Council is proposing to eliminate the auto allowance for certain City employees. There are currently fourteen people working for the City who receive an auto allowance, all of whom are Department Heads or Division Heads. Two other employees, the Fire Chief and the Police Chief, have City vehicles provided to them.

Three of the fourteen who receive an auto allowance receive their respective auto allowances pursuant to contracts with the City. Seven employees receive auto allowances pursuant to written offers of employment. Two employees receive their respective auto allowances pursuant to oral offers of employment. Two employees are long-term employees (one is a department head and one is a division head) who were each initially provided with a City-owned vehicle, but were converted to the auto allowance when the City no longer chose to provide vehicles to department heads. It is estimated that the transition from using a City-owned vehicle to compensating use of a personal vehicle through an auto allowance occurred in the late 1980's.

At one time, the Mayor and members of the City Council also received an auto allowance, however pursuant to a court ruling in the Eighth Judicial District, a Mayor and the members of a City Council are only entitled to a salary, set by ordinance, and no fringe benefits.

The auto allowance was given to the above-referenced department heads and division heads because these individuals were required to make their own personal automobiles available for use on official City business within Boulder City and the greater Las Vegas area. This is a common practice throughout southern Nevada. The last resolution establishing the amount of the auto allowances to be given was passed in July of 1999.

- III. Analysis: Although an offer of employment is not an employment contract per se, it is, nevertheless, a contract, because it contains all of the essential elements of a contract. It is an agreement that is legal in purpose, supported by consideration, is in a form required by law and is made by two competent parties who are giving genuine assent.

An offer of employment is used when a company wishes to extend a job offer to a potential employee in a more relaxed and congratulatory manner, rather than the more formal, traditional and adversarial employment agreement (the City Manager, City Clerk and City Attorney each have employment agreements with the City).

The offer of employment letter still includes pertinent aspects of the job, such as salary, duties, benefits, etc., but the main difference between the two lies in the more casual approach that the offer of employment takes in conveying and memorializing this information. An offer of employment is written evidence that the City is offering a particular position within City in accordance with specific terms (usually a stated salary and specific benefits, etc.).

When an employee accepts the offer of employment, a contract exists that basically says: "I agree to come to work for the City in a specific position of employment and in return, the City will provide me with a stated salary and enumerated benefits. It is unfair, and arguably a breach of the agreement to set forth specific terms in the offer of employment and then fail to honor them.

In the instant case, the auto allowance is specifically offered as one of the terms of employment. If the prospective employee accepts the offer of employment, the City is bound to honor the terms.

Should the City Council determine that the policy of giving appointed officials, department heads and certain division heads an auto allowance is unwarranted, it can certainly pass a resolution to eliminate the practice in the future, but it cannot unilaterally rescind that part of the agreement with current employees who were promised the auto allowance as a term of their employment.

It is foreseeable that if the City Council were to take away the auto allowance from specific employees, those employees could sue the City for breach of contract. By way of example, if the Community Development Director could show that he accepted the job partly because of the auto allowance, left a secure job, relocated his family to Boulder City at significant cost and obligated himself to a large mortgage in reliance on the terms in the City's offer of employment, he may be able to get damages, including costs and attorney fees, for any financial damages he could prove.

- IV. Conclusion: An offer of employment, including an auto allowance, if accepted, creates a binding contract between the City that in return for the prospective employee's acceptance of employment, the City will provide specific benefits to the employee. If the City Council now reneges with regard to the auto allowance, which was a specifically enumerated part of the offer of employment, the City faces potential exposure to liability for breach of contract.