

Opinion: Placerville keeps breaking the law

By Larry Weitzman

The issue at hand is whether the city of Placerville can legally contract with a private contractor to issue parking tickets. The law has been clear since April 23, 2002, that it cannot do so, yet Placerville has continually contracted with a private company to handle this service. By flaunting the law – once again – the city is subjecting itself to being ordered by a court to refund all parking ticket fines back to the parking offenders.



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Placerville City Manager Cleve Morris's attempt at legal reasoning to explain why the city has not complied with the law has only dug Placerville a deeper hole as he tried to claim that the issuing of parking tickets is a "special service" allowed under a California Government Code Section 37103. He also made the argument that it was the result of a loss of an employee and alluding to the idea no one could be found to do the job (for the past 15 years).

How ludicrous and facetious. And what he stated as an excuse and his claim that the law allows the use of private contractors for the issuance of parking tickets because it requires "special" knowledge and training will come back to haunt him, just like what is told to every criminal defendant

on his arrest, "anything you say can and will be used against you."

Morris also made the mistake of claiming the attorney general's April 23, 2002, opinion only related to violations of the California Vehicle Code and tried to distinguish the opinion by claiming these are parking tickets which are merely a violation of a city ordinance. Such illogical thinking only makes the hole Morris is digging deeper. One must conclude that Placerville's city attorney had a hand in this response published in the *Mountain Democrat* on Dec. 4. If that is true, perhaps Placerville could use a new city attorney.

First, as to this not being a Vehicle Code violation is simply adding to the ridiculousness of his arguments which is a charitable use of the word "argument." It is California Vehicle Code Section 40202 that specifically governs the issuance of all parking citations and Section 40200.5 that allows specifically for the use of private contractors for the processing and collection of parking tickets and all California statutory law is superior and governs over city ordinances. All power of a general law city emanates from that statutory law. There is no statutory authority for private contractors issuing parking tickets.

As to the availability of California Government Code Sections 37103 and 53060 as allowing for the use of private contractors for special services, they were enacted for services usually not in the employ of cities like scientists, architects, engineers and such. What Mr. Morris didn't tell you is that the last sentence of the section says, "It may pay such compensation to these experts as it deems proper." The legislative intent clearly didn't mean people who issue parking tickets.

Furthermore, the latter section, 53060, again talks of "special services" where it stated specifically in paragraph two of the three paragraph section: "The authority herein

given to contract shall include the right of the legislative body of the corporation (Placerville City Council) or district to contract for the issuance and preparation of payroll checks.”

There is case law defining what “special services” are allowed to be contracted for and in the case of *Darley v. Ward*, the Court of Appeal stated, “Whether services are special requires a consideration of facts such as the nature of the services, the qualifications of the person furnishing them and their availability from public sources.” The court held that management services provided at two county hospitals was a “special service” because it required expertise not possessed by county employees. In general, “special services” include financial, economic, accounting, engineering, legal, administrative, medical, therapeutic, architectural services, airport or building security, and laundry services. In addition to the ability to enter into contracts for “special services,” there are several specific statutes that grant public entities the right to contract out for particular services. For example, a general law city may contract for financial, economic, accounting, engineering, legal, or administrative matters; collection or disposal of garbage; a ferry system; personnel selection and administration services; construction or maintenance of airports; and ambulance services. General law counties may contract out health care services; in-home supportive services; rescue and resuscitator services with the state; optometric services; joint operation of jails with other counties; and collection, disposal, or destruction of garbage and waste.”

Quoted from the CPER Journal Online, “Why we can’t contract out half our workforce,” By Irma Rodriguez Moisa, Nate Kowalski, and Lisa M. Carrillo.

The law is clear: the statutory law has provided for general law cities the right to contract out certain specialized and other functions as delineated above, and the issuance of

parking tickets is not one of them. In another legal treatise written after the Costa Mesa City Employees Association v. City of Costa Mesa decision which said the court of appeal found that as a rule, California statutes prohibit a general law city from contracting with private entities to provide nonspecial services, the law firm of Kronick, Moskowitz, Tiedemann & Girard said, "As a general law city, city is bound by the state's general laws. The court concluded that Government Code 37103 and 53060 limit a city's right to contract with private entities. As these statutes have been interpreted over the years, they generally prohibit a city from contracting with a private entity for the provision of nonspecial services."

The attorney general opinion of April 23, 2002, No. 01-1103 was correct as the latter case law indicates. The analysis of the attorney general as to the issuance of parking tickets not being a special service and not coming under the exceptions of the general law as provided by special and limited situations as defined by Government Code Sections 37103 and 53060 is absolutely correct. The case law and legal opinions are clear. Claiming that the issuance of parking tickets is specialized and should be included in the legislative intent and allowed under 37103 and 53060 is laughable. Most larger cities have employees do this job and the rate of pay does not indicate the job is highly skilled, requires a sophisticated education, higher math or what not. Any 8-year-old that can use an iPhone could do it. Mr. Morris's claim they could not find anyone to do it just means they offered too little money to prospective employees.

As to Placerville's current annual contract cost of about \$97,000 being less than their estimate of having their own employee(s) is irrelevant. It is illegal for them to contract the service out to a private company by law. And by the way, for the last five years, the contract cost was approximately \$144,000 a year, which is the information gleaned from the

city budget. They are not saving money, they are breaking the law and no excuse will suffice. Certainly not since April 23, 2002. It just makes the city look worse by ignoring the law.

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