



1

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OPINION NO. 96-05

TO: Ella Makula, Vice Mayor
FROM: Stephen M. Kemp, City Attorney
DATE: July 17, 1996
SUBJECT: Opinion Request

QUESTION:

What are the standards and guidelines for use of a cellular telephone provided to a City Council member by the City?

OPINION:

I have attached a copy of Opinion No. 95-10 pertaining to general reimbursement of expenses. You may wish to review this opinion as to general guidelines in this area.

The starting place to answer your question is to note that property provided by the City must be used for a public purpose. The City could not make a gift of its property to an individual elected official or employee for use for personal purposes. Clearly, there are certain items that would be directly City related and other items that would be directly benefitting personal use. For example, it would be related to City business for a Councilmember to use a cellular phone to return calls to constituents that were placed to City Hall. Conversely, it would be inappropriate for a Councilmember to provide their cellular phone to their family or friends and permit them to make personal calls to other individuals on it.

The issue to be resolved is the large grey area between the two extremes. There are several general legal principles that I would suggest you follow in making such determinations. First, the cellular phone, as with any City property, is provided to you as an elected official for the benefit of the City. In using the equipment, the primary question should be does this use benefit the City. Use of the phone to contact one's place of employment to handle business transactions while they are attempting to respond to constituent calls would appear to benefit the City since it does result in the Councilmember becoming more accessible. The key question becomes at what point does such use become more of a benefit to the private individual and less of a benefit to the City.

The second principle is that the cellular telephone, as with any City asset, is public property. As with any employee, the elected official has a fiduciary duty to the City to safeguard and protect public property and not misuse it. Third, as noted in Opinion No. 95-10, it is implied within the Charter that the Council should be reimbursed for its reasonable and necessary expenses in fulfilling the duties of their offices. In this case, the operative term is reasonable and necessary. The use of the cellular telephone, or any City property, should be managed in such a way that it can be demonstrated it was reasonable and necessary to the performance of one's duties.

Applying these principles to the issue you raised, it would not appear that the use of a cellular phone by employees of your company to contact you regarding employment related matters with your private employer would be a violation of use of City property, provided that it permits you to be more available to perform your duties as a City Councilmember. I trust that this answers your questions in this matter. If you have any further questions, please feel free to contact me.

Enclosure

cc: Honorable Mayor and Council