



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in the case of In re G.I. Industries, Inc., (Bankruptcy proceedings), United States District Court, Central District of California

MEETING DATE: March 19, 1997

PREPARED BY: City Attorney

RECOMMENDATION: The city join the amicus brief in the case of In re G.I. Industries, Inc.

BACKGROUND: *Amicus* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves an important issue related to city control over the assignment of franchise agreements. To ensure that the solid waste service provided to its citizens would be conducted lawfully by a reputable local hauler the City of Thousand Oaks enacted a comprehensive solid waste franchise ordinance. This ordinance set forth various criteria for the award of the franchise and a requirement that the city approve any assignment of the franchise, including an assignment accomplished through a transfer of ownership of the franchisee. Soon after the city awarded the solid waste franchise to a local carrier that franchisee filed for bankruptcy. As part of the bankruptcy proceedings the local company was absorbed within a larger company (G.I. Industries). G.I. Industries was then absorbed by a still larger, non-local, company (Western Waste) which was then sold to a still larger company (USA Waste) located in Dallas, Texas. In accordance with its power under the franchise the city rejected the assignment of the franchise to USA based on the fact that Western Waste, who would be managing the operation, was not local and had been involved in various illegal activities. [Western Waste officials had been convicted of bribing public officials, were embroiled in the controversy surrounding Compton City Council Member Patrica Moore and were under investigation by the United States Attorney related to illegal activities in Riverside, Los Angeles and Orange Counties]

G.I. Industries filed a motion with the Bankruptcy Court seeking to force the city to accept the assignment of the franchise. In granting this motion the court held that the city was preempted by federal law from interfering and that in any event, the city had unreasonably withheld consent to the transfer of the franchise. The City of Thousand Oaks has appealed this decision and seeks the support of the City of Lodi as *Amicus Curiae*.

The importance of this case to cities generally is that the court has usurped local control over the transfer of a city franchise and if the ruling is allowed to stand on appeal it permits the Bankruptcy Court to override legislative provisions enacted by a city, the findings of a city council as to past misconduct on the part of a proposed franchisee and the consent provisions residing within various city contracts and franchises. Basically, this ruling would allow any franchisee to file a bankruptcy petition and have the court transfer or assign the contract or franchise even over the objections of the city and without applying the standards adopted by the city.

APPROVED: _____
H. Dixon Flynn -- City Manager

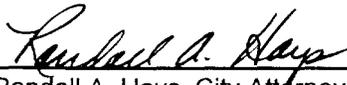


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FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager