



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Join in Amicus Brief in the case of G & G Fire Sprinklers, Inc. v. Bradshaw, 204 F.3d 941 in the 9th Circuit, Writ of Certiorari to the U. S. Supreme Court.

MEETING DATE: August 16, 2000

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: The City join the Amicus Brief in the case of G & G Fire Sprinklers, Inc. v. Bradshaw.

BACKGROUND: Amicus Briefs are filed in various actions, which involves 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.

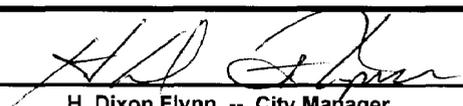
The purpose of this Amicus Brief is to convince the United States Supreme Court to issue a Writ of Certiorari in this case, which means that the Court would hear the case. The significance of this case to the City is that it involves potentially the process the City would need to undertake in order to withhold funds from a contractor who is found by the Commissioner of the Department of Labor Standards Enforcement to have violated the law relative to the payment of prevailing wages. This is particularly significant relative to public contracts for Public Works projects.

In this case, a contractor, G & G Fire Sprinklers, Inc. was acting as a subcontractor on a Public Works project. The California Department of Labor Standards Enforcement issued withholding notices against G & G which required that monies be withheld from G & G due to alleged violations of prevailing wage laws. G & G challenged the withholding alleging that a public works contract created a property interest warranting protection by the 14th Amendment to the U. S. Constitution. Basically, G & G alleged that there was not proper due process allowed prior to them facing a withholding of funds due to alleged violations of the prevailing wage laws. The Court agreed with G & G. This agreement on the part of the 9th Circuit has a potential for making the administration of public contracts quite cumbersome when there are allegations made against a contractor alleging violations of prevailing wage laws.

What is most disturbing about the 9th Circuit opinion is that the Court's decision is contrary to decision of other Federal Courts which have held that an ordinary commercial contract with a public entity does not create a public interest under the 14th Amendment. Additionally, the decision appears to be in direct conflict with a previous 9th Circuit decision that held that a contract to supply services to a public entity did not give rise to a property interest subject to the Constitutional requirements of due process.

While Writs of Certiorari are infrequently granted, this particular case seems to cry out for a hearing before the U. S. Supreme Court due to the fact that the matter has been before them previously and was remanded back to the 9th Circuit for reconsideration. Typically once that is done, it is a clue or a signal to

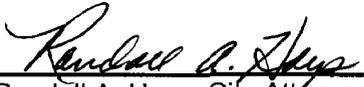
APPROVED: _____


H. Dixon Flynn -- City Manager

the Appellate Court that the U. S. Supreme Court does not agree with the Appellate Court's decision. The Appellate Court instead of recognizing the signal that was being sent proceeded undeterred in its reconsideration and reinstated the decision, which had been sent back to them.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney