

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

COUNTY OF SAN JOAQUIN

vs.

CITY OF STOCKTON, ET AL

Plaintiff(s)

Defendant(s)

NATURE OF HEARING: DECISION ON SUBMISSION

Case No: 379455

Judge: DAVID G. VANDERWALL

Bailiff: Peagler

Date: 3-16-09

Clerk: René Weaver

Reporter: None

Modesto, CA.

APPEARANCES: None.

This matter was taken under submission on 1-12-09 following jury trial. Counsel, Dan Burch, Carolyn Frank, Abram Feuerstein, and Derek Cole appeared for Plaintiff and Counsel, Michael Higgins, Charles Reese, and Mark Stump appeared for Defendant, City of Stockton at trial.

Having read, heard and considered all pleadings and testimony in this matter, Court makes the following findings and Orders:

1. The petition for writ of mandate and request for declaratory relief by petitioner and plaintiff County of San Joaquin ("County") is **GRANTED**. Respondent and defendant City of Stockton ("City") shall immediately comply with San Joaquin County Emergency Medical Services Agency policies 3001 and 3001A.
2. Policies 3001 and 3001A require that all emergency medical calls be transferred by law enforcement agencies in San Joaquin County to a single countywide emergency dispatch center, which is the LIFECOM center operated by American Medical Response. These policies were adopted for medical reasons and were intended to improve the effectiveness of emergency medical services in San Joaquin County.
3. The San Joaquin County Emergency Medical Services Agency and its director have the authority to control emergency medical dispatch within the City of Stockton. Health and Safety Code sections §1797.201, §1797.220, and §1798 et seq. See County of San Bernardino v City of San Bernardino (1997) 15 Cal.4<sup>th</sup> 909, pp 925-929.

4. The San Joaquin County Emergency Medical Services Agency and its director have properly exercised their medical authority and control over emergency medical services, including dispatch, in adopting policies 3001 and 3001A pursuant to Health and Safety Code section §1791.1.
5. Additionally, City consented, by acquiescence, in County's assertion of control over emergency medical dispatch within the City of Stockton. County of San Bernardino, supra, at p 924 states (this court's emphasis): "Rather than adopt this illogical reading of the statute, we conclude that under section 1797.201 a county may not contravene the authority of eligible cities and fire districts to continue the administration of their prehospital EMS without the latter's consent, either through acquiescence or through formal agreement."
6. The Court finds that "acquiescence" in this sense is a broader term than "waiver", and not subject to waiver's requirement of clear and convincing evidence, knowing intent, etc.
7. The Court also finds that City is estopped to dispute County's control of emergency medical dispatch within the City of Stockton.
8. Respondent/defendant City is not exempt from compliance with Policies Nos. 3001 and 3001A under the Warren 911 Emergency Assistance Act (Government Code section 53100, et seq.) or the antitrust provisions of Health and Safety Code sections §1796.6, §1797.85 and §1797.224.
9. City had the right, under Health and Safety Code section §1797.201, to continue administering (grandfathering clause) certain pre-hospital emergency medical services, as it had been doing so since June 1, 1980. This right could be lost, as to a given policy, procedure or protocol, by express agreement, or by acquiescence in policies and procedures and protocols inconsistent with City's administration of a given emergency policy, procedure or protocol. The City contends emergency dispatch was subject to the grandfathering clause.

The second paragraph of Health & Safety Code section §1797.201 states: "*Notwithstanding any provision of this section the provisions of Chapter 5 (commencing with section 1798) shall apply.*" I.e., the grandfather clause of section §1797.201 does not apply to medical control as provided in Health and Safety Code section §1798, et seq., and medical control is defined in Health and Safety section §1797.220, which includes the words (this Court's emphasis): "*...so as to meet any medical control requirements including dispatch...*"

City contends that it may control emergency medical dispatch under the grandfathering clause of Health and Safety Code section §1797.201, but the plain wording of sections §1797.201, §1797.220 and §1798, et seq., contradict this contention. Emergency medical dispatch within the City of Stockton is subject to control by the San Joaquin County Emergency Medical Services Agency and its director, which have asserted such control through Policies Nos. 3001 and 3001A.

10. The Court finds that City's 2003 - 2005 participation in the creation by County of its proposed new Transportation Plan, and in preparation of County's request for Proposal which led to its 2005 adoption of exclusive operating areas for ambulance services, including dispatch, and in submitting a bid in response to the Request for Proposal, constituted acquiescence in County's assertion of medical control over emergency medical dispatch within the City of Stockton, even if City had the grandfathering rights it asserts. County of San Bernardino v. City of San Bernardino, *supra* p. 924. This same conduct by City and detrimental reliance thereon by County estops City from challenging County's assertion of control over emergency medical dispatch within the City of Stockton.
11. The Court finds that City's actions in coordinating its 1998-2003 provision of emergency medical services with the County of San Joaquin did not constitute acquiescence in the County's assertion of control over emergency medical dispatch within the City of Stockton. Insufficient evidence was presented that City was aware that such actions might impair its control of emergency medical dispatch within the City limits.

12. The City was, however, aware that the then proposed new County Transportation Plan and Request for Proposal, plus County's award of contracts in response to bids under the Request for Proposal, might impair its control of emergency medical dispatch within the City of Stockton. City in fact began working on preparing a response to the Request for Proposal even prior to its issuance. (Trial Exhibit 87 [Ed Rodriguez Deposition Transcript dated 5/16/08] at 159:4-160:5.) Representatives from the Stockton Fire Department were interviewed by County consultants tasked with developing the Request for Proposal and no Stockton Fire Department representative expressed opposition to the Request for Proposal plan that allowed the winning bidder to perform its own dispatch. (Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 42:20-43:21.) Representatives from the Stockton Fire Department also attended town hall meetings to discuss the Transportation Plan, and a mandatory bidder's conference prior to submission of Request for Proposal bids. (Trial Exh. 82 [Hafey D.T. dated 5/6/08] at 48:23-50:1, 118:3-120:18; Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 45:3-24; Trial Exhibit 87 [Rodriguez Deposition Transcript dated 5/16/08] at 183:17-184:18.) At no time did any representative raise any questions or objections from City or the Stockton Fire Department as to how dispatch would be handled under the Request for Proposal. (Trial Exhibit 82 [Hafey Deposition Transcript dated 5/6/08] at 48:23-50:1, 118:3-120:18; Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 45:3-24, 62:18-25; Trial Exhibit 87 [Rodriguez Deposition Transcript dated 5/16/08] at 146:20-147:16, 185:24-186:17, 188:9-20.)

Both the 2004 Transportation Plan and the Request for Proposal explicitly stated that the contractor would be allowed to choose whether to perform ambulance dispatch services itself or whether to contract with another entity for that service. (Trial Exhibit 11 [Trial declaration of Elaine Hatch] at Exhibit E, pp. 27-28; Trial Exhibit 3 [Request for Proposal], p. 28.) Moreover, the Transportation Plan and the Request for Proposal made clear that the dispatch center selected by the contractor would receive emergency medical calls from primary Public Safety Answering Points, would be required to furnish pre-arrival instructions to emergency callers, and should

therefore be eligible to become a secondary Public Safety Answering Point. (*Ibid.*) In fact, in responding to the Request for Proposal, the Stockton Fire Department specifically touted the strength of its dispatch center, and clearly indicated it knew dispatch could be separated. (Trial Exhibit 88 [City Proposal],p.2.)

Further, Deputy Chief Hafey, one of the two Stockton Fire Department representatives assigned to prepare the Stockton Fire Department's response to the Request for Proposal, admitted that he read the dispatch requirements in the Request for Proposal and knew that the winning bidder had to be eligible as a secondary Public Safety Answering Point and could choose to operate its own dispatch center. (Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 85:4-88:13, 100:10-24.) In fact, Mr. Hafey admitted that he knew that if American Medical Response won the bid, American Medical Response could choose to provide dispatch services through its own dispatch center, but he assumed American Medical Response would choose to contract with the Stockton Fire Department's dispatch center. (Trial Exhibit 82 [Hafey Deposition Transcript dated 5/6/08] at 113:14-114:10.) He went on to testify that he believed it was highly likely that whoever the winning bidder was would choose to continue using the Stockton Fire Department's dispatch center. (Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 104:23-105:15.)

However, Deputy Chief Hafey acknowledged that he knew it was possible that the Stockton Fire Department's dispatch of its first responders might be separated from ambulance dispatch if the Stockton Fire Department did not win the bid. (Trial Exhibit 83 [Hafey Deposition Transcript dated 5/6/08] at 106:1-9, 117:3-18.) Ed Rodriguez, the other senior Stockton Fire Department employee responsible for preparing the City's proposal, agreed that if the Stockton Fire Department did not win the Request for Proposal bid, it was possible the Stockton Fire Department would begin receiving information from another entity in order to dispatch the Stockton Fire Department first responders. (Trial Exhibit 87 [Rodriguez Deposition Transcript dated 5/16/08] at 161:17-162:25.) This possibility is in fact

what happened after American Medical Response won the bid. If the Stockton Fire Department complied with Policies 3001 and 3001A, then American Medical Response would receive the live 911 emergency medical call and would simultaneously notify the Stockton Fire Department of the details of the emergency so that the Stockton Fire Department could dispatch its first responders to the scene while American Medical Response dispatched its ambulances. In light of all these facts introduced at trial, it is disingenuous for City to argue it did not know Emergency Medical Dispatch was at issue in the Request for Proposal bid. City's proposal itself mentions dispatch 147 times. (Trial Exhibit 88 [City Proposal].)

13. The actions by City constitute acquiescence in County's assertion of control over emergency medical dispatch within the City of Stockton. County of San Bernardino v. City of San Bernardino, supra 924. Based on the evidence presented at trial, the Court makes a specific finding of fact that City, and the Stockton Fire Department, assumed that the Stockton Fire Department would retain control of emergency medical dispatch no matter who won the bid submitted during this process, and had no contingency or fallback position if they did not. From the evidence it is clear it simply did not occur to them that they might lose in the bidding process.
14. County detrimentally relied on City's cooperative participation in preparation of County's proposed Transportation Plan and Request for Proposal. County assumed City would accept the outcome of the County's award of bids for exclusive operating areas for emergency medical dispatch, whether or not City and the Stockton Fire Department won the bid it submitted, and issued its 2004 Transportation Plan plus the Request for Proposal, and awarded bids, based on this assumption. This estops City from challenging the County's assertion of control over emergency medical dispatch within the City of Stockton.

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15. County of San Joaquin shall prepare a Statement of Decision in conformance with this decision including the appropriate findings of fact and conclusions of law.

cc:

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MINUTE ORDER

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