MEMORANDUM

TO: MTAS Management Consultant

FROM: Sid Hemsley, Senior Law Consultant

DATE: February 2, 2011

RE: Opening mail by municipal offices and officers

You have the following question: Can a city adopt (whether in writing or practice) a policy of having one person or office open all mail that comes to the city or city offices before it is routed to the addressee?

The answer appears to be no.

As far as I can determine from the legal literature, that question has rarely arisen in that context. In fact, I can find only one such case, Saul v. Larsen, 928 F2d. 829 (9th Cir. 1991), which involved complaints by an employee of the Social Security Administration that his personal and union-related mail was being opened by one of his superiors. But the court never addressed that complaint, holding that the Civil Service Reform Act provided a complete administrative remedy for his complaint.

Most of the cases in the area of the opening of mail by persons other than the person to whom it was addressed are generated by prisoners. But even in that context, what the courts have said is pertinent to the governmental sector. In the U.S. Sixth Circuit Court of Appeals, the holdings of which apply to Tennessee, it is said in Sallie v. Brooks, 343 F.3d 868 (2003) that:

A prisoner’s right to receive mail is protected by the First Amendment, but prison officials may impose restrictions that are reasonably related to security or other legitimate penological objectives. [Citations omitted by me.] As we have noted, “prison officials may open prisoners’ incoming mail pursuant to a uniform and evenly applied policy with an eye to maintaining prison security.” [Citation omitted by me.] However, prison officials who open and read incoming mail in an arbitrary and capricious fashion violate a prisoner’s First Amendment rights. [Citation omitted by me.] [At 873-74]

Also see Vincent v. Melton, 2010 WL 3420333 (M.D. Tenn.) [at 14]

It is difficult to argue that municipal employees have fewer First Amendment rights with respect to mail sent to them than do prisoners. Indeed, it was said in Weeks v. U.S., 232 U.S.(1914), that:

In Ex parte **Jackson, 96 U. S. 727, 733, 24 L. ed. 877, 879,** this court recognized the principle of protection [by the Fourth Amendment] as applicable to letters and sealed packages in the mail, and held that, consistently with this guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures, such matter could only be opened and examined upon warrants issued on oath or affirmation, particularly describing the thing to be seized, ‘as is required when papers are subjected to search in one's own household.’ [At 390-91]

Also see U.S. v. Phillips, 478 F.2d 745 (5th Cir. 1973), and Paton v. LaPrade, 469 F.Supp. 773 (D.N.J. 1978).

I assume that in most municipalities, the bulk of the mail received is mail directed related to city business. That may even be true of most mail that is addressed to specific city officials or employees. But given the First Amendment protection afforded to mail, it seems logical and even wise for a city to adopt a policy that insures that mail addressed to specific persons is sent to those persons before it is opened. However, I know of no reason why such persons could not agree for mail addressed to them to be opened and even reviewed by the “mail room” or whatever municipal person handles the mail when it is delivered by the post office if that arrangement seemed fitting to those persons.

I have asked the MTAS Library to see it if can locate some good sample mail polices. I suspect such policies would vary with the sizes of the municipalities and their volume of mail.