

MEMORANDUM OF LAW

DATE: January 23, 1986
TO: Bruce Herring, Risk Management Director
FROM: City Attorney
SUBJECT: Supplemental Pension Savings Plan Withdrawal
Application

By memorandum dated December 9, 1985, you requested that this office review a revised withdrawal form to be used in the administration of the Supplemental Pension Savings Plan (SPSP). You indicated that the newly designed form requires an employee who is less than 100% vested to sign the form twice and if the employee is married and desires to withdraw an amount in excess of \$3,500 the employee's spouse and a witness must also sign the form twice. You have asked if the form may be simplified by combining the signature requirements for the withdrawal provision and the forfeiture provision into one signature block. You specifically asked if a spouse's signature is required if a forfeiture of any amount may occur.

We have reviewed the withdrawal application and find that it exceeds the requirements set forth in the recent amendments to article VI of the Plan Document entitled "Withdrawals While Employed." The signature of a spouse of an employee is only required when the employee makes a withdrawal in excess of \$3,500 and this signature must be witnessed by a notary public or an SPSP administrator. This requirement was recommended by the City's consultant in order to bring the SPSP plan into compliance with the Retirement Equity Act (REA) (Public Law 98-397, 98 Stat. 1426).

The form could be simplified to require one signature by the employee, but it must provide for a signature block for the employee's spouse and the appropriate witness in those cases where the employee desires to withdraw more than \$3,500. Neither the Plan Document nor any provision of law requires the signature of an employee's spouse for withdrawals of less than \$3,500, even when a forfeiture may occur. Such a requirement could be interpreted as an additional condition of withdrawal that is not

provided for in article VI of the Plan Document. If you desire to require an additional spousal signature, the plan must be amended in accordance with the provisions of article XI.

JOHN W. WITT, City Attorney

By

John M. Kaheny
Deputy City Attorney

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