MEMORANDUM OF LAW

DATE: August 12, 1986

TO: Councilman Bill Cleator
FROM: City Attorney
SUBJECT: Special Class Safety Members, Retired (Letter
         from Frank Peters)

   City Attorney John Witt referred your July 31, 1986
memorandum to me for review and response. I have reviewed your
inquiry, Frank Peters' letter, Bob Logan's response to you about
the matter, and the applicable Municipal Code sections. It is my
opinion that Mr. Logan's response is factually and legally
correct.

   The Annual Supplemental Benefit 13th check was originally
authorized in 1980 for specifically designated classes of
retirees. Mr. Peters' and the other 59 retirees he alludes to
were not eligible for the benefit. The benefit, incidentally,
was voted upon by the system membership and thereafter instituted
by ordinance. The money identified for distribution that first
year was fully disbursed.

   The following year, apparently in response by the Retirement
Board to requests to broaden the eligibility for the benefit,
special class safety retirees who were receiving fixed retirement
benefits were included within the 13th check benefit program. I
don't recall, however, that the Board concluded Mr. Peters and
group were "unjustly" excluded. That additional class
eligibility was also voted upon by the system membership and
incorporated into the Municipal Code by Ordinance No. O-15593,
dated October 5, 1981. The new eligible class thereafter
received the 13th check benefit for 1981 and subsequent years.
It should be pointed out that the vote upon the matter and the
Ordinance adopted thereafter did not make the eligibility and
benefit retroactive. Unless specifically provided, any
retroactive payment for the year 1980, a year during which that
class was not eligible, would have been an unlawful gift of
public funds. Furthermore, the fund of money from which the 1980
distribution was made had been fully expended in 1980. It is

appropriate to once again point out that Mr. Peters has received
all the 13th checks he was legally eligible for and entitled to,
including the larger distribution effected as a result of the
settlement in the 13th check case.

   In respect to Mr. Peters second issue, i.e., certain city
employees getting health insurance paid by the Retirement System,

this was also incorporated as part of the "meet and confer"
process Ordinance No. O-16449, dated June 24, 1985 and the
settlement in the Andrews 13th check case Ordinance No.
O-16679, dated June 30, 1986. Those provisions were voted on by
the members of the retirement system and have been incorporated
in Municipal Code section 24.0907.2. The eligibility for such
coverage is clearly set forth therein, covering as a cumulative
result of "meet and confer" and the 13th check case settlement
all employees who were on the active payroll of the City on
October 5, 1980 and retired thereafter. That is the law of the
Retirement System which the Retirement officer and the Board are
bound to follow.

   In summary, the law of the matter retirement ordinances is
very clear. You observe there is no question as to entitlement.
I believe it is more correctly stated that there is no question
as to non-entitlement on several grounds. First, Mr. Peters and
his group were not legally entitled to such benefit for the year
in question. Second, all funds for the benefit for that year
were paid out as called for in the ordinances. Third, the law
does not provide for nor imply retroactivity and, absent such
provision, any payment for past ineligible years would be viewed
as a gift of public funds. Fourth, there may very well be a
limitation of actions problem in that Mr. Peters has waited six
years to make known his concern, recognizing that he has received
annual benefits for the years 1981 through 1985, plus the extra
significant additional benefit as a result of the 13th check case
settlement, all for years he was legally eligible.

   I trust the above analysis and discussion resolves the issue.
If you have any further questions, please feel free to ask us.

                    JOHN W. WITT, City Attorney

                    By
                       Jack Katz, Chief Deputy

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