

MEMORANDUM OF LAW

DATE: August 14, 1986

TO: Retirement Board  
FROM: City Attorney  
SUBJECT: Payment of 13th Check for 1983; Statute of  
Limitations

At the July 31, 1986 meeting of the Retirement Board's Business Procedure Committee, the matter of the 13th Check for Mr. William PonCavage was discussed. This matter was referred to the Committee by the full Board on July 18, 1986 for the purpose of discussion and recommendation. The Committee recommended motion by Ron Saathoff, second by Jerry Lewis, vote unanimous he be paid the 1983 13th Check pending our review of the appropriate statute of limitations, i.e., has the time run so that the 1983 check cannot be legally claimed.

The facts involved in the PonCavage case have been set forth in Bob Logan's memorandum of July 25, 1986 to the Committee. Basically, it concerns a situation wherein Mr. PonCavage applied for a disability retirement to be effective October 25, 1983. Because of the necessity of procuring sufficient medical documentation and thereafter processing and scheduling the application for Board action, Mr. PonCavage's request was not acted upon until March 1984. At that time, the Board approved the industrial disability application with an effective date retroactive to the initial application date of October 25, 1983.

The issue presented at this time by Mr. PonCavage is his request for payment of a 1983 13th Check. Mr. PonCavage was not paid a 13th Check for 1983 because he was not on the retirement payroll at the time the calculations for payment and determination of eligible retirees were made. Mr. Logan applied a literal interpretation to section 24.0404-A.2. of the Municipal Code which, statutorily upon its face, appears to be the correct construction. The fact that the Board granted a retroactive retirement date in this case complicated the situation to a great degree although it was not in excess of the Board's authority. Having said that, it is our conclusion that the action by the

Board in granting a retroactive retirement date to Mr. PonCavage essentially made him an October 1983 retiree and, therefore, eligible for the 1983 13th Check distribution. We understand that he has received 13th Checks each year since.

In respect to the time lapse since the initial occurrence and Mr. PonCavage's present request, an inquiry was made to us in

respect to the appropriate statute of limitations. Stated otherwise, has Mr. PonCavage waited too long before asserting his entitlement to a 1983 distribution and he is now foreclosed from so asserting? While we find no specific period set forth in the retirement ordinances, we are not without legal guidance.

The provisions of a retirement system, as with other benefit programs, have been determined to be rights in the nature of contractual rights. It is a well settled tenet of labor law that the very act of employment incorporates the terms and conditions of employment. Citations omitted. Those terms and conditions, incorporated by various written rules, regulations and other written policies and procedures, are part and parcel of the employment contract. Viewed in such context, the applicable statute of limitations is four (4) years, as set forth in section 337 of the California Code of Civil Procedure. That being the statutory period of years for this matter, the action by Mr. PonCavage is timely and you are so advised.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

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