

MEMORANDUM OF LAW

DATE: October 2, 1987

TO: D. Cruz Gonzalez, Risk Management Director
FROM: City Attorney
SUBJECT: Supplemental Pension Savings Plan - Designation
of Beneficiary

You have asked this office to identify the proper beneficiary for a Supplemental Pension Savings Plan (SPSP) death benefit under the following circumstances:

An employee designated his mother as his primary beneficiary upon enrollment in the plan on January 8, 1982. Upon the employee's recent death, your office was notified that the employee had been married at the time of enrollment in SPSP but you have no record of a spousal consent form authorizing the mother to be the beneficiary. A spousal consent form is required by sections 2.03 and 9.04 of the current plan document before someone else than the spouse can receive death benefits from SPSP.

Prior to January 1, 1985, a participant in SPSP was able to designate any beneficiary he or she desired without obtaining the consent of his or her spouse. As a result of an election by the participants of the plan held during the period of May 17 through May 31, 1985, the City Council on November 12, 1985 adopted Resolution No. R-264418 authorizing the City Manager to amend the SPSP plan to conform with certain provisions of the Retirement Equity Act of 1984 (REACT) (Public Law 98-397, 98 Stats. 1426 1984) and the Deficit Reduction Act of 1984 (DEFRA) (Public Law 98-369, 98 Stats. 494 1984). The restated plan specifically adopted the following sections in order to be consistent with the spousal protection provisions of REACT and DEFRA.

2.03 Designation of Beneficiary

Each Participant shall designate a Beneficiary to receive any death benefit payable under the Plan. In the event the

Participant dies before distribution has occurred pursuant to Sections 7.01, 7.02, or 8.01, such distribution shall be paid to the Participant's surviving spouse. If there is no surviving spouse, or if the surviving spouse consents to forego receipt of the distribution in accordance with Section 9.04, distribution shall be made to any person,

persons or entity designated by the Participant as a Beneficiary hereunder.

9.04 Spousal Consent

If the married Participant's Beneficiary under the Plan is someone other than the Participant's spouse, or if a married Participant elects to receive payments in a form other than the normal form described in Section 9.01(b), then such designation or election is subject to spousal consent. The spouse must indicate consent in writing witnessed by a representative of the Plan or a notary public.

Once the above sections were amended, previous beneficiary designations by employees were no longer valid unless they complied with the provisions of the amended and restated plan document. All employees had been put on notice of these changes through the election process and the passing of the resolution by the City Council. Section 2.03 clearly states that absent a spouse's consent to forego receipt of the distribution of the employee's benefits, the distribution shall be paid to the participant's surviving spouse. Therefore, pursuant to your responsibilities as plan administrator, payment in this case must be made to the spouse of the employee in accordance with the expressed provisions of the plan.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:357:x(043.2)

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