

MEMORANDUM OF LAW

DATE: May 29, 1987

TO: D. Cruz Gonzalez, Risk Management Director
FROM: City Attorney
SUBJECT: Supplemental Pension and Savings Plan (SPSP)
Withdrawals - Police Recruits

In a memorandum dated May 8, 1987, you requested this office to answer the following questions:

- (1) Is SPSP participation mandatory for employees in the police recruit classification?
- (2) If SPSP participation is mandatory for police recruits until becoming sworn peace officers, would distributions be allowable upon becoming sworn because they are 0% vested and not entitled to employer contributions?

At the present time, police recruits do not become sworn peace officers until after eight weeks in the police academy. As nonsworn individuals, they are required to participate in SPSP as general members of the 1981 Pension Plan of the City Employees Retirement System. Mun. Code . 24.100 et seq. This requirement is set forth in article I, para. 1.08 and article II, para. 2.01 of The City of San Diego's Supplemental Pension Savings Plan (M).

Until recently, when a police recruit became eligible for safety membership in the 1981 Pension Plan, eligibility for membership in SPSP ceased and the employee's SPSP account was distributed to the employee as if there had been a termination of employment with The City of San Diego. In other words, the employee received his or her voluntary and mandatory contributions to SPSP along with any corresponding earnings. Because the employees were participants in SPSP for less than a year, they had not become vested and were not entitled to any of employer matching contributions or the earnings from such contributions.

Earlier this year, the City's consultant the Wyatt Company informed the City that the Internal Revenue Service (IRS) does not consider loss of eligibility status in the SPSP Plan as a termination of employment for distribution purposes. Therefore, the City could no longer continue the practice of returning contributions and its earnings to employees who transfer to an ineligible status. The effect of this requirement is that individuals who are initially hired by The City of San Diego into the police recruit classification will contribute a relatively

small amount to SPSP during the initial eight weeks at the police academy. This amount must then remain in the employee's account earning interest until death, disability or separation from employment. The employee will not be able to make further contributions into SPSP or make withdrawals unless the employee transfers into an eligible job classification.

A simple solution to the problem of maintaining an ever increasing number of small SPSP accounts would be to amend the SPSP Plan by a majority vote to exclude employees in the police recruit classification. However, other City employees who are participants in SPSP, such as community service officers or police dispatchers, often transfer into the police recruit class. It is also not uncommon for an employee to transfer back to his or her former job classification if unsuccessful at the police academy or during probation. Therefore, we recommend that any amendment excluding employees in the police recruit classification from participation in the SPSP Plan not apply to current eligible participants who transfer into that job classification. While this proposal is not a perfect solution, it appears to be the only way under the current tax laws for the City to avoid maintaining an ever increasing number of very small SPSP accounts.

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By

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