

MEMORANDUM OF LAW

DATE: February 9, 1987

TO: Cruz Gonzalez, Risk Management Director via
Jack McGrory, Deputy City Manager
FROM: City Attorney
SUBJECT: Reduction of Supplemental Pensions Savings Plan
Benefits to Recover Monies Owed to the City by
Employees

You have recently requested an opinion from this office concerning The City of San Diego's ability to offset monies due a terminated employee from his or her Supplemental Pension Savings Plan (SPSP) account in order to recover amounts owed by the employee to the City for various reasons such as overpayments or unreturned property.

SPSP was developed and promulgated to provide employees a replacement benefit when The City of San Diego withdrew from the Social Security System. The monies in the Plan are credited to employees' accounts and become "vested" pursuant to the terms of the Plan. All of the terms and conditions of the Plan are set forth in the Plan Document.

Article XIV entitled "Miscellaneous" contains section 14.02 entitled "Nonalienation of Benefits." That section reads:

Participants and their Beneficiaries shall be entitled to all the benefits specifically set out under terms of the Plan, but said benefits or any of the property rights therein shall not be assignable or distributable to any creditor or other claimant of such Participant. A Participant shall not have the right to anticipate, assign, pledge, accelerate or in any other way, dispose or encumber any of the monies or benefits or other property which may be payable or become payable to such Participant or its Beneficiary. The preceding sentence

shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in section 414(p) of the Code and determined pursuant to Section

10.02(b), or any domestic relations order entered before January 1, 1985.

We read article XIV to prohibit such attachment of funds in the Plan.

We have on several previous occasions rejected private attempts to attach the SPSP account for monies allegedly due except as specifically authorized in section 14.02. The City is in no better position under the Plan than any other creditor and cannot, under the terms of the current Plan Document, withhold from the Plan any monies due a terminated employee in order to satisfy a claim by the City.

Chapter II, article 4 of the San Diego Municipal Code, entitled "City Employees Retirement System," sets forth a series of provisions governing the operation of the Retirement System. See sections 24.0100 et seq. Contained therein are two provisions which authorize the City to recover monies owing to the City by employees from benefits or other monies due said employees from the City. Section 24.0207 entitled "Auditor and Comptroller to Withhold Monies Owing City - General Members" and section 24.0309 entitled "Auditor and Comptroller to Withhold Monies Owing City - Safety Members," both state that the "Auditor and Comptroller of The City of San Diego is hereby empowered and it shall be his duty to deduct any monies owing to the City by said employees from any benefits or any other monies due said employees from the City." It is apparent, therefore, that the Auditor and Comptroller of The City of San Diego is authorized to deduct monies owing to the City by employees from benefits or other monies due said employees from the employees' retirement account. It is not clear whether these specific Municipal Code sections also authorize the Auditor and Comptroller to withhold other monies due the employee from The City of San Diego. If not otherwise prohibited by law, that possibility exists. We are certain, however, that absent a lawful court order, the City may not deduct monies owed the City from an employee's wages, as that practice is forbidden by California Labor Code section 224.

For the above reasons, we advise you that the preferred method of recovering City monies from a terminated employee is to

offset it from retirement funds payable to the employee upon termination. If The City of San Diego desires to offset SPSP benefits in a method similar to that indicated in sections 24.0207 and 24.0309 of the Municipal Code the SPSP Plan Document must be amended to permit such a procedure.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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