

DATE: December 3, 1990

TO: Larry Grissom, Retirement Administrator  
FROM: City Attorney  
SUBJECT: Mandatory Social Security Coverage

In a memorandum dated October 12, 1990, you asked several questions concerning the effect that the possible imposition of mandatory social security coverage on certain City employees will have on the City Employees' Retirement System (CERS). Shortly thereafter, on October 27, 1990, the United States Congress approved a final Revenue Conference Agreement extending mandatory social security coverage to state and local employees not covered by a public employee retirement program on July 1, 1990. Although we do have a copy of the Revenue Conference Agreement, we do not have in our possession at this time a copy of the exact statutory language.

Based on this limited information, we will attempt to answer your questions as specifically possible.

1. Does the Supplemental Pension Savings Plan (SPSP) constitute a "public retirement plan" under the Revenue Conference Agreement?

According to the Revenue Conference Agreement, a retirement system is defined as one that fits the same definition of retirement system that is found in the Social Security Act 42 U.S.C. section 418(B)(b)(4). That definition states that a retirement system is a pension, annuity, retirement, or similar funded system established by a state or by a political subdivision thereof.

On May 9, 1985, the Department of the Treasury issued a favorable determination letter holding that the SPSP Plans of The City of San Diego conformed to the requirements of section 401(a) of the Internal Revenue Code. In other words, the SPSP Plans are qualified retirement plans. We therefore believe that the SPSP Plans are public retirement plans within the definition found in Revenue Conference Agreement.

2. Does the fact that SPSP Plans have a voluntary and a mandatory contribution component impact its qualification as a public retirement plan and does it matter if the employee is making voluntary contributions to the SPSP Plans in addition to the mandatory contributions?

As we have indicated above, both Plans are qualified retirement plans. The fact that they contain provisions for both voluntary and mandatory contributions has no affect on this status.

3. Does either The City of San Diego's 401(k) Plan or its deferred compensation plan constitute a public retirement plan?

The City of San Diego's deferred compensation plan is a non-qualified deferred compensation plan established pursuant to Internal Revenue Code section 457. Such plans are not considered retirement plans under IRC section 401(a).

The City's 401(k) plan is a deferred arrangement which is not normally made available to state and local governments. However, because of a special rule for plans in effect on June 8, 1984, The City of San Diego may offer such an arrangement. Generally speaking, 401(k) plans by themselves are not considered retirement plans but are considered as qualified cash or deferred arrangements.

4. Can an employee who is covered under social security be dropped from social security once the employee becomes eligible to join CERS?

The Revenue Conference Agreement does not address this issue. It does appear from the language of the Agreement that the legislative intent is to require public employees who are not participants in a retirement plan to join social security in order to ensure that the employee is covered by at least one or the other but not necessarily both programs. However, we cannot be sure of the answer to your question until the actual Treasury Regulations are published.

5. If an employee is working part time for the City in a position that is ineligible for membership in CERS and simultaneously working for another employer in a position which is covered by social security, would mandatory coverage be applicable to the City employment?

Yes. The Revenue Conference Agreement does not grant any exception for individuals who are covered by social security through other employment.

6. What is the impact that mandatory social security coverage will have on an employee's eligibility to purchase service credit for that time in CERS?

This is a very complicated question. In the absence of published regulations, we can only assume that the regulations will permit such a purchase of service credit. Such purchase will be dependant upon specific plan provisions concerning social security integration and other provisions of law.

7. If we determine to change the CERS membership requirements in order to avoid mandatory social security coverage, would those changes be subject to meet and confer? If so, how would this be impacted by a retroactive effect of date of mandatory coverage?

The City of San Diego has many options available in order to avoid mandatory social security coverage. Therefore, any specific change in benefits which the City desires to implement will be subject to the meet and confer process. There is no need to address the effect of retroactive mandatory coverage because the effective date of mandatory coverage is June 30, 1991.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

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