

MEMORANDUM OF LAW

DATE: January 11, 1990

TO: Lawrence B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Retirement Investment Accounting

In a memorandum dated November 21, 1989, you requested this office to review the attached Memorandum of Law dated March 12, 1975, written by Deputy City Attorney Michael B. Poynor, concerning the record keeping functions of the City Treasurer for the City Employees' Retirement fund. You asked if the memorandum could be reviewed in light of the fact that the dynamics of public pension investment accounting, level of sophistication and reliability of custodial banks, etc., have all changed dramatically in the last fifteen years.

You are particularly interested in the following questions:

1. Can the City Employees' Retirement System (CERS) assume any of the functions currently performed by the City Treasurer?
2. Can the City Treasurer contract with an outside vendor for the performance of these functions?
3. Is there any prohibition against the Retirement Administrator processing the retirement payroll if the City Treasurer and the City Auditor and Comptroller still perform their specific duties under the City Charter?

We have reviewed the Memorandum of Law dated March 12, 1975, and find that its analysis and conclusion are still valid.

Although there have been many changes in the public pension investment accounting methods over the years, the duties of the City Treasurer, City Auditor and Comptroller and the Retirement Board Administration under the Charter of The City of San Diego have not changed. The duties that are expressly imposed upon them by the City Charter are ministerial duties. In other words the performance of these duties is mandatory and not

discretionary. *Flora Crane Service, Inc. v. Ross*, 61 Cal. 2d 199 (1964); *City of Redondo Beach v. DeLong*, 123 Cal. App. 3d 1035 (1981).

We do not believe, however, that the Charter's imposition of mandatory duties upon the City Treasurer, City Auditor and Comptroller and the Retirement Board of Administration precludes the Board of Administration from rendering support to the City Treasurer's office or to the City Auditor and Comptroller pursuant to Council direction under City Charter section 146.

Such support could include the processing of the retirement payroll by the retirement office under the supervision and direction of the City Treasurer and City Auditor and Comptroller. There is also no specific prohibition against contracting for support services by the City Treasurer but such a contract cannot relieve the City Treasurer, the City Auditor and Comptroller or the Retirement Board of Administration of any duties mandated upon them by the Charter of The City of San Diego.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

JMK:mrh:920.8(x043.2)

Attachment

cc Conny Jamison

Ed Ryan

ML-90-5