

MEMORANDUM OF LAW

DATE: November 26, 1991
TO: Doris Uzdavines, Employee Savings Plan Administrator, Risk
Management Department
FROM: City Attorney
SUBJECT: SPSP Vesting for Councilmembers

You have requested an opinion regarding Councilman Henderson's Supplemental Pension Savings Plan ("SPSP") disbursement. Specifically, you want to know if he should be treated as being 60% or 80% vested based upon his slightly less than four year term of office.

The SPSP plan allows for an individual to increase his or her vested interest in SPSP by 20% with each year of service to the City. An individual is fully vested after five years. Councilman Henderson took office December 7, 1987. He will leave office December 4, 1991. This period is five days short of four calendar years, thus you have asked if the period should be counted as three or four years for vesting purposes.

It is a well-settled principle that pension laws should be liberally construed in favor of the persons intended to be benefitted by them and ambiguities resolved in favor of the pensioner. *Richardson v. City of San Diego*, 193 Cal. App. 2d 648, 650 (1961). Pension rights are valuable property rights and such rights may not be taken away by strained construction of the applicable statutory language. *Cavitt v. City of Los Angeles*, 251 Cal. App. 2d 623, 627 (1967). In this instance Councilman Henderson was elected to serve a four year term pursuant to San Diego City Charter ("Charter") section 12. The section also indicates that the term of each councilperson is to begin on the first Monday after the first day of December. Thus it is only through the vagaries of the calendar year changes that Councilman Henderson has failed to serve the full one thousand four hundred and sixty one (1,461) days normally associated with the phrase four years.

Nevertheless, given the court's liberal construction of pension rights and the rules of statutory construction which indicate that statutes, or in this case Charter sections, "should be interpreted so as to achieve a result that is reasonable and that comports with the apparent purpose and intent of the Legislature." *Stanley v. Justice Court*, 55 Cal. App. 3d 244, 253 (1976) and that "A practical construction is preferred to one that is technical and is required when the latter would lead to mischief or absurdity." *Id.* at 253., we opine that Councilman Henderson must be deemed to have served a full four years. Therefore he is eighty percent (80%) vested for purposes of his SPSP distribution. Such an interpretation comports with, and gives validity to, the spirit and intent of both Charter section 12 and the SPSP plan document.

If I can answer any further questions, please feel free to contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:357(x043.2)

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