

## MEMORANDUM OF LAW

DATE: December 4, 1991  
TO: Larry B. Grissom, Retirement Administrator  
FROM: City Attorney  
SUBJECT: Vesting of Legislative Members

In a memorandum dated November 12, 1991 you asked whether the four year vesting requirement set forth in San Diego Municipal Code ("SDMC") section 24.0545 means the completion of a full term in office. After reviewing the San Diego City Charter ("Charter"), SDMC and other relevant authority we conclude that it does. Our analysis follows.

### BACKGROUND

The Legislative Officers Retirement Plan is set forth in Division 5-C of the SDMC. SDMC section 24.0545 describes the Legislative Officer Age and Service Requirements for Retirement. It provides:

Upon his written application to the Board of Administration, a legislative officer who is a member of this system shall be retired and thereafter shall receive for life the service retirement allowance provided in Section 24.0546 if the member a) is 60 or more years of age and has 4 or more years of creditable service at retirement, or b) has 20 or more years of creditable service at retirement, regardless of his age, or c) has 15 or more years of creditable service at an age less than 60 with the retirement allowance reduced by 2% for each year and fractional year under 60. (Emphasis added.)

A question has arisen over the interpretation of the four year vesting provision set forth above with respect to councilmembers Wes Pratt and Bruce Henderson. Since they were not re-elected, they will be leaving office on December 2, 1991. Their terms began on December 7, 1987. Although they will each have completed a full four year term according to the Charter, both of them will technically be five days short of completing four calendar years of service. Vesting under SDMC section 24.0545 is contingent upon satisfying the requirement that the councilmember have "4 or more creditable years of service." This Memorandum of Law addresses this issue.

### DISCUSSION

Charter section 12 sets forth the election and term requirements for councilmembers. It provides in pertinent part:

Council members, other than the Mayor, shall be elected at either the municipal primary or the general municipal election held in the odd-numbered years and,

except as hereinafter provided, shall hold office for the term of four (4) years from and after 10:00 a.m. the first Monday after the first day of December next succeeding their election and until their successors are elected and qualified.

Charter section 12 contemplates a four year term for councilmembers. Although this section does not address the full term versus the full four years of creditable service issue raised in your memorandum, a reasonable interpretation of this section suggests that completion of a full four year term is not dependent upon the counting of individual days. The express language of Charter section 12 supports this conclusion. The beginning date for a councilmember's four year term is not stated on a date certain such as the first day of December following the election. Instead, the beginning date is the "first Monday after the first day of December next succeeding their election." Presumably, this language was used to avoid the commencement of the term on a weekend. Clearly, the language used in Charter section 12 concerning the beginning date for a councilmember's term ensures that the term will begin on a specified Monday in December following the councilmember's election. Likewise, if not reelected, the councilmember's term will end on a specified Monday following the new councilmember's assuming office.

The establishment of the beginning date of a councilmember's term as outlined in Charter section 12 permits the very situation now faced by councilmembers Pratt and Henderson. Clearly, each has completed a full four year term. Pursuant to Charter section 12, however, the dates used to measure their terms in office indicate that they are technically five days short of serving a full four years.

SDMC section 24.0545 and its enabling ordinance, O-10479 N.S., effective July 1, 1971, are silent on the literal definition of the vesting requirement of "4 or more years of creditable service" set forth therein. Lacking an express pronouncement, interpretation of this requirement becomes a matter of determining the legislative intent. In this regard, it is clear that Charter section 12 contemplates a four year term regardless of the technical completion of the requisite number of days in a calendar year.

In the absence of any contrary intent, it is also reasonable to infer that Division 5-C, Legislative Officers Retirement Plan also contemplates the four year term described in Charter section 12. Importantly, under the statutory language used in Charter section 12, a councilmember could never serve a full 365 days in the fourth year of his or her term. The dates mandated by Charter section 12 prevent this. Quite simply, a councilmember serving only one four year term will always lack one to seven days in the fourth year of his or her term. "A statute is a solemn enactment of the state acting through its legislature and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that the legislature would do a futile thing." 2A N.

J. Singer, Sutherland Statutory Construction Section 45.12, pp 54-55 (4th ed. 1984). As such, it would be unreasonable to deny benefit eligibility to a councilmember who has served a full four year term.

In addition, it is a well established principle of statutory construction that the law favors rational and sensible construction. 2A N. J. Singer, Sutherland Statutory Construction Section 45.12, pp 54-55 (4th ed. 1984). "A statute is to be construed in such a way as to render it 'reasonable, fair and harmonious with (its) manifest (legislative) purposes' . . . and the literal meaning of its words must give way to avoid harsh results and mischievous or absurd consequences." (Citations omitted.) County of San Diego v. Muniz, 22 Cal. 3d 29, 36 (1978).

Moreover, it is well settled that pension laws should be liberally construed in favor of the persons intended to be benefitted by them. Any ambiguities should be resolved in favor of the pensioner. Richardson v. City of San Diego, 193 Cal. App. 2d 648, 650 (1961). Finally, pension rights are valuable property rights which 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).

The evident purpose of SDMC section 24.0545 is to provide vesting for legislative members upon completion of one term in office. Councilmembers Pratt and Henderson have completed a full term in office. Any proposed interpretation of SDMC section 24.0545 which would prevent vesting because of their failure to serve a specified number of days due to the term limits established by Charter section 12 would be unjust and contrary to the manifest purpose behind SDMC section 24.0545.

#### CONCLUSION

The four year vesting requirement set forth in SDMC section 24.0545 contemplates completion of one term of office. Charter section 12 establishes a four year term. When measuring a completed term, the fact that a councilmember may lack between one to seven days due to the term limit dates set forth in Charter section 12 does not compel a different result. The manifest legislative purpose behind SDMC section 24.0545, assuming all other requirements are met, is to provide a retirement benefit upon the completion of a four year term in office.

JOHN W. WITT, City Attorney

By

Loraine L. Etherington

Deputy City Attorney

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