

MEMORANDUM OF LAW

DATE: December 9, 1992

TO: Eugene T. Ruzzini, Audit Division Manager

FROM: City Attorney

SUBJECT: Repayment Agreement Negotiated by Retirement  
Administrator

In a memorandum dated September 28, 1992, you asked the City Attorney to respond to several questions concerning a repayment agreement negotiated by the Retirement Administrator in August of 1991. The agreement was for repayment of an overpayment of pension benefits detected by the Audit Division in the 1991 audit of the City Employees' Retirement System. Your specific questions and our responses follow:

Question No. 1                      What was the Retirement Administrator's authority to establish the payment arrangement he negotiated?

The answer to this question is found in Rule 9 of the Rules of the Retirement Board of Administration. Rule 9 sets forth the duties of the Retirement Administrator and reads as follows:

**Rule 9. DUTIES OF RETIREMENT ADMINISTRATOR**

The Retirement Administrator shall be solely responsible to the Board and shall manage the routine affairs of the office; supervise and assist the retirement staff; mark the progress reports of the members of the staff; devise and implement an information and counseling program; prepare and maintain a procedures manual; prepare reports for the Board; have primary responsibility, under the Board, to deal with the Actuary; coordinate with other administrative offices; and perform such other duties as the Board directs. Prepare the annual budget for review by the Business Procedures Committee.

He/She shall issue communications,  
sign requisitions and reports.

Rules of the Retirement Board of Administration, 7 (1983).

The negotiation of the repayment schedule at issue here was an exercise of the Retirement Administrator's responsibility to "manage the routine affairs of the office." To "manage" means to handle or direct with a degree of skill or address. Webster's Ninth New Collegiate Dictionary 722 (1987). Although the phrase "routine affair" is not defined in the City Charter, San Diego Municipal Code or Rules of the Retirement Board of Administration, routine means "a regular course of procedure." Webster's Ninth New Collegiate Dictionary 1027 (1987).

I have been informed that the Retirement Administrator is responsible for correcting problems associated with overpayment or underpayment of benefits and has been since the day he was hired by the Board in 1987. Although only a handful of these problems arise each year, the fact remains that as a regular and customary course of procedure over the last five years, these matters have been routinely managed by the Retirement Administrator without Board intervention.

Therefore, the Retirement Administrator's authority to negotiate repayment schedules has been and will continue to be derived from Board Rule 9 until such time that the Board gives a contrary directive.

Question No. 2                      Why didn't the Retirement Board  
have to approve the repayment  
schedule?

Under Charter section 144, the Board is granted authority to establish such rules and regulations as it may deem proper and to appoint such employees as may be necessary for the Board to fulfil its obligation to manage the Retirement System. Board Rule 9 is one of the rules adopted by the Board. The Retirement Administrator is one of the employees appointed by the Board.

As described above, the Board has delegated responsibility to the Retirement Administrator to manage the routine affairs of the office. The plain meaning of this provision is that the Retirement Administrator has complete discretion to discharge those duties without Board approval. Of course, the Board is free to later question discretion exercised by the Retirement Administrator or to direct the Administrator that in the future certain matters previously considered "routine affairs" must be brought before the Board for approval.

The action of the Retirement Administrator at issue here did not require the Board's approval because the nature of the duty being discharged fell under responsibilities solely

delegated to him under Board Rule 9.

Question No. 3                    Administrative Regulation 63.30  
requires all repayment arrangements  
for amounts owed the City to be  
approved by the City Treasurer.  
Why didn't this repayment plan have  
to be approved by the City  
Treasurer?

Section 3.4 of Administrative Regulation 63.30 refers to power delegated to the City Treasurer in Charter section 45. Section 45 of the Charter reads in pertinent part: "Whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law or ordinance, the Treasurer shall be authorized to demand and receive the same." Consistent with this Charter provision, sections 4.3(c) and 4.3(f) of Administrative Regulation 63.30 respectively state that the City Treasurer is responsible for "collecting all delinquent monies owed the City . . ." and "representing the City in Small Claims Court."

Charter section 45 and Administrative Regulation 63.30 do not regulate the repayment plan at issue here for the simple reason that the particular debt at issue is not owed to the "City." The debt is owed to the City Employees' Retirement Trust Fund ("Trust Fund").

The Trust Fund was established under the authority of Charter section 145. Charter section 144 states that the Board "shall have exclusive control of the administration and investment of such fund or funds as may be established." Individually and collectively, Board members are trustees of the Trust Fund charged with the delicate fiduciary responsibility of obtaining the maximum degree of investment return for the Retirement System members, while at the same time prudently safeguarding and protecting the trust property. *Purdy v. Bank of America*, 2 Cal. 2d 298 (1935).

Obviously, the collection of debts owed to the Trust Fund falls within the Board's responsibility to administer the Fund. The Board could delegate this Charter mandated responsibility for collection of debts to staff, to the City Treasurer or to any other qualified collection agency.

Ironically, the antithetical question you pose is prohibited by the Charter. The City Manager, the City Treasurer or even the City Council cannot divest the Board of its Charter mandated responsibility by way of an administrative regulation or ordinance because any such regulation would be void as contrary to the Charter and as an attempt to amend the Charter in an unauthorized manner. *Montgomery v. Board of Administration*, 34

Cal. App. 2d 514, 520 (1939).

I hope this memorandum addresses your concerns. Please contact me if you have any questions.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

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cc Conny Jamison

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