

MEMORANDUM OF LAW

DATE: July 6, 1992

TO: Judy Folsom, Associate Administrative Analyst,
Retirement Office

FROM: City Attorney

SUBJECT: Supplemental Benefit Eligibility of Marie B. Krause

In a memorandum dated May 7, 1992, you asked whether the above-referenced widow of a Special Class Safety Member was eligible to receive the supplemental benefit ("13th check") described in San Diego Municipal Code ("SDMC") section 24.0404. You have indicated that your research of Mr. Krause's file shows that he retired as a fixed pension Special Class Safety Member. If this is correct, you note that his widow may have been eligible for a 13th check from its inception.

After reviewing Mr. Krause's file, the SDMC and the ordinance enacting the 13th check, we conclude that Mrs. Krause is eligible for this benefit. Although she was not eligible for this benefit at its inception in 1980, subsequent amendments in 1981 included her within the eligible class of recipients. Our analysis including the responses to your specific questions follows:

DISCUSSION

The 13th check described in SDMC section 24.0404 was enacted pursuant to Ordinance No. O-15353, adopted on October 6, 1980. Responding to the concerns faced by retired employees, as a result of extreme inflationary factors, the City Council requested the Retirement Board to review a proposal whereby the surplus undistributed earnings experienced by the Retirement System be treated in a manner so that 50% of these earnings be distributed to retirees under certain conditions and mathematical formula to be developed by the Retirement Board.

Pursuant to this request, a special committee met, deliberated and developed criteria for distribution to qualified retirees. The committee's criteria and distribution concept was reported to and approved by the full Board at its regularly scheduled meeting of July 18, 1980. The City Council approved the plan pursuant to Resolution No. R-252479, dated August 12, 1980. The plan was subsequently approved by the members of the

Retirement System as required by the City Charter.

The specifics of the proposal for the 13th check referenced in Ordinance No. O-15353 and Resolution No. R-252479 are set forth in Attachment "A" to Resolution No. R-252479, a memorandum dated July 30, 1980 from Robert P. Logan, Retirement Officer to the Honorable Mayor and City Council. With respect to the availability of this supplemental benefit to survivors of deceased retirees, paragraph (5) provides:

Surviving spouses of deceased retired members with over ten years of service will be eligible to participate in the Annual Retirement Supplemental Program with their benefits determined in the same ratio as their monthly retirement benefit bears to the monthly benefit received by their deceased retired spouse.

Language identical to the above-referenced paragraph from Resolution No. R-252479. As originally enacted, however, legislative special class safety members and their survivors were expressly excluded. SDMC section 24.0404, as originally enacted, provided:

SEC. 24.0404 ANNUAL SUPPLEMENTAL BENEFITS--QUALIFICATION AND DETERMINATION

The purpose and intent of this section is to provide necessary guidelines for effectuating the payment of annual supplemental benefits set forth in Section 24.0907.1 of this Code by (a) identifying and defining those retirees qualified to receive such benefit and (b) establishing a method for determining the amount of the annual supplemental benefit.

A. QUALIFIED RETIREES: For the purpose of identifying those retirees who shall be deemed qualified to receive the annual supplemental benefit established in this Code, the following criteria shall apply:

1. The retiree must have completed a minimum of ten (10) years continuous service as a member

of the system in order to be qualified;

2. The retiree must be on the retirement payroll for the month of October of any year in which benefits are to be paid except as provided otherwise in Section 3 of this ordinance for the first year's distribution;

3. Qualified Retirees shall be limited to the following classes:

- (a) Retired General and Safety members;
- (b) Retired Unified Port District members; and
- (c) General, Safety and Unified Port District member survivors receiving monthly pensions from the system, provided the deceased general or safety or Unified Port District member had met the minimum continuous service requirement in subsection A.1. above.

4. Legislative and Special Class safety members and the survivors of both classes shall not be eligible for participation in the annual supplemental benefit program established by this Article.

(Emphasis added.)

B. DETERMINATION OF BENEFIT AMOUNT AND PAYMENT THEREOF:

For the purpose of determining the amount of the supplemental benefit payment to Qualified Retirees, the following process shall apply:

1. The Retirement Officer each year shall identify all Qualified Retirees on the retirement payroll for the month of October.

2. The Retirement Officer shall then determine the number of years of creditable service possessed by each Qualified Retiree

identified in 1. above.

3. The number of creditable years for all Qualified Retirees shall be added together to determine the total sum of Qualified creditable years.

4. The total sum of Qualified creditable years shall then be divided into the total of Surplus Undistributed Earnings designated for distribution pursuant to Section 24.0907.1 of this Code to arrive at a per annum dollar value for each creditable year.

5. The per annum dollar value shall then be multiplied by each Qualified Retiree's creditable service to determine the annual supplemental benefit to be paid each Qualified Retiree the following November.

6. Survivors of deceased Qualified Retirees, as defined in subsection A above, shall be eligible for annual supplemental benefits, said benefits to be determined in the same ratio as their monthly benefit bears to the monthly benefit received by their deceased retired spouse. (Emphasis added.)

C. MISCELLANEOUS: The Retirement Board, with the cooperation and approval of the City Auditor and Comptroller, shall promulgate necessary rules to effectuate the provisions and intent of this Article.

Although legislative and special class safety members and their survivors were initially excluded, SDMC section 24.0404 was subsequently amended by Ordinance No. O-15593, adopted on October 5, 1981, to include special class safety members who were receiving fixed monthly retirement benefits. Survivors of the same were also included provided such member had met the continuous service requirement in SDMC section 24.0404A(1).

As a result of this change, SDMC section 24.0404 was amended to read accordingly. The strikeout for this ordinance

best illustrates the change. It shows:

Sec. 24.0404 ANNUAL SUPPLEMENTAL BENEFITS -
QUALIFICATION DETERMINATION

No change to first paragraph and subsections A.1.
and 2.

3. Qualified Retirees shall be limited to the
following classes:

- a. Retired General and Safety members;
- b. Retired Unified Port District members;

and

c. General, Safety and Unified Port

District member survivors receiving monthly pensions from
the system, provided the deceased general or safety or
Unified Port District member had met the minimum continuous
service requirement in subsection A.1. above.

Special class safety members who are receiving
fixed monthly retirement benefits; and

d. Survivors of (a), (b) and (c) above receiving
monthly pensions from the system, provided such member had
met the minimum continuous service requirement in
subsection A.1. above.

No changes in 4., B.1., 2., 3., 5., 6., and C.

Pursuant to the above-referenced changes, Mrs. Krause
became eligible to receive the 13th check benefit so long as her
deceased spouse had met the 10-year minimum service requirement
set forth in SDMC section 24.0404 A.1.

Before closing, we respond to the specific questions raised
in your memorandum dated May 7, 1992.

Question No. 1: If the Retirement System must pay Mrs.
Krause the Supplemental Benefit, how could
she have been overlooked during
establishment of the Andrews class?

Answer: As set forth more fully above, Mrs. Krause is entitled
to the 13th check from 1981 forward. With respect to the Andrews
lawsuit, we note that survivors of retirees who retired before
October 6, 1980, were not involved in that lawsuit.

Question No. 2: If the System could pay Mrs. Krause if she
meets the eligibility criteria to receive
the Supplemental Benefit, but there is no
legal requirement for payment, would there
be a "gift of public funds" issue?

Answer: There is no gift of public funds issue in this case.
Mrs. Krause became an eligible recipient for the 13th check
pursuant to Ordinance No. O-15593, adopted on October 5, 1981.
As such, there is a legal requirement for payment.

Question No. 3: Is there a statute of limitations?

Answer: No.

CONCLUSION

Since the Ordinance No. O-15593 was adopted on October 5, 1981, and took effect on the thirtieth day from and after its passage, the operative date for eligibility is November 4, 1981. As such, assuming the 10-year continuous service requirement was met, Mrs. Krause became eligible for the 13th check from 1981 forward.

Please contact me if I can be of any further assistance.

JOHN W. WITT, City Attorney

By

Loraine L. Etherington

Deputy City Attorney

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cc Larry Grissom

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