

## MEMORANDUM OF LAW

DATE: January 29, 1992  
TO: Rich Snapper, Personnel Director  
FROM: City Attorney  
SUBJECT: Interest on Back Pay Awards

Recently, City Employee Anthony Bryant was returned to work and awarded back pay after he appealed his termination to the Civil Service Commission ("Commission"). Subsequently, Everett Bobbitt, his attorney, requested interest on the back pay award pursuant to the court's holding in *Goldfarb v. Civil Service Commission*, 225 Cal. App. 3d 633 (1990). As a consequence, you have asked a number of questions concerning interest payments on back pay awards. Specifically, you have asked the following questions.

Is the City obligated to pay interest on back pay ordered by the Commission: (1) In Bryant's case; (2) In any or all cases where the Commission has ordered the reinstatement with back pay of a terminated employee; (3) In any or all cases where the Commission has ordered a reduction in the suspension of an employee; (4) In cases where interest on back pay has been agreed to by the parties pursuant to stipulation?

You have also asked how interest is to be calculated in each case. Finally, you have asked if the findings should include specific language indicating that interest is due on back pay awards.

The answer to the first three questions can be answered to with a single response. The holding in *Goldfarb* is based upon the statutory provisions of California Civil Code ("Civil Code") section 3287. Prior to the 1959 amendment of Civil Code section 3287, public entities were exempt from the provisions of this section. Now, however, public entities are specifically included. Civil Code section 3287 provides in pertinent part:

- (a) Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested him upon a particular day, is entitled also to recover interest thereon from that day, except during such time the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any such debt including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

Additionally, the decision in *Goldfarb* made clear that back pay awards are damages for purposes of Civil Code section 3287. As the court

explained on page 635 "The Civil Code, defines 'damages' broadly as monetary compensation for one who suffers detriment from the unlawful act or omission of another (Section 3281), and a number of cases have indicated that back pay awards are 'damages' under Civil Code section 3287." It is arguable that terminating an employee is not an unlawful act or omission of another, even if that employee is subsequently returned to work. However, the Goldfarb court makes clear that they at least find such actions to be unlawful, therefore, the decision is binding on the City.

Based upon Civil Code section 3287 and the holding in Goldfarb, interest is due and payable in the Bryant case, in all cases where the Commission has ordered reinstatement with back pay, and in all cases where the Commission has ordered a reduction in suspension with back pay.

Should a stipulation provide for payment of interest, then interest must be paid pursuant to the terms of the stipulation. Nevertheless, stipulations present a separate issue. "A stipulation is an agreement between counsel respecting business before the court Commission and like any other agreement or contract, it is essential that the parties or their counsel agree to its terms." *Palmer v. City of Long Beach*, 33 Cal. 2d 134, 142 (1948). As with other contracts, a stipulation allows the parties to reach any agreement they choose, including the waiver of certain rights in exchange for concessions by the other party. Whether interest is waived will depend on the various strengths and weaknesses of the two parties. Thus, the parties to a stipulation may agree to waive the statutory interest requirement.

Interest accrues from the date the salary was due and payable. As the court explained in *Mass v. Board of Education*, 61 Cal. 2d 612, 625 (1964):

Each salary payment in the instant case accrued on a date certain. Unless the suspension itself can be sustained and the board thus relieved of any obligation whatsoever, the salary payments became vested as of the dates they accrued. If plaintiff had not been wrongfully suspended, he would have obtained the benefit of the moneys paid as of those dates; he has thus lost the natural growth and productivity of the withheld salary in the form of interest.

Under this reasoning, an appellant is entitled to interest on each installment of back salary from the date it fell due.

Finally, payment of interest should be noted in the Commissions findings. The findings should clearly enunciate what actions the Commission took and what the actions were based upon. It is probably best to note that the interest is being paid pursuant to Civil Code section 3287. If you have any further questions please feel free to contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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