

MEMORANDUM OF LAW

DATE: February 5, 1993

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Legislative Retirement Plan

In a memorandum dated January 14, 1993, you direct our attention to a recent change in the San Diego City Charter ("Charter"). You ask us whether this Charter amendment requires any responsive course of action by the Retirement System. Our evaluation and recommendation follows.

BACKGROUND

A ballot initiative known as Proposition E was included on the ballot in the general election held on November 3, 1992, and approved by a majority vote of the people of the City of San Diego. Proposition E amended sections 10 and 12 of the Charter to create a Council district election timing scheme which will eventually synchronize all Council district elections with California State elections by the year 1998.

As amended, Charter sections 10 and 12 require that in the primary and general election of 1993, Council members for Districts 1, 3, 5, and 7 shall be chosen by the electors for a term of three (3) years and thereafter they shall be elected for a regular term of four (4) years. In the primary and general election of 1995, Council members for Districts 2, 4, 6, and 8 shall be chosen by the electors for a term of three (3) years and thereafter they shall be elected for a regular term of four (4) years.

ANALYSIS

San Diego Municipal Code ("SDMC") section 24.0545 sets forth the age and service requirements for retirement in the Legislative Officers Retirement Plan ("LORP"). SDMC section 24.0545 reads as follows:

Upon 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 8 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.

The term "creditable service" is defined in SDMC section 24.0103, in pertinent part, as follows:

"Creditable Service" for purposes of qualification for benefits and retirement allowances under this System means service rendered for compensation as an employee or officer (employed, appointed or elected) of the City or a contracting agency, and only while he is receiving compensation from the City or contracting agency, and is a member of and contributing to this System pursuant to appropriate provisions of this article.

When read together, these Code sections unambiguously require that a member of LORP be employed with the City for a minimum of four years in order to qualify for retirement benefits.

Once before, in 1991, this office was called upon to resolve an issue which involved interpreting and harmonizing the vesting provisions of the LORP and Charter section 12. At that time, two members of LORP were separating from service with the City after each having served one full four year term in office in strict accordance with Charter section 12. However, by serving their terms in literal compliance with Charter section 12, both members fell five calendar days short of being compensated for four full calendar years in office. The question presented was whether or not these outgoing Council members had satisfied the vesting requirement of LORP.

Our office concluded that both officers had legally satisfied the creditable service requirements of SDMC section 24.0545. This result was legally justified by the application of well established rules of statutory construction. Our analysis revealed that at the time SDMC section 24.0545 was adopted, the Council fully intended for the vesting requirements of LORP to be satisfied when a member of the plan served a full four year term in accordance with Charter section 12.

In contrast, it would be baseless in fact and wrong as a matter of law to conclude in this instance that the Council intended for the vesting requirements of LORP to be satisfied "whenever a Council member serves a full term," regardless of the duration of that term. Such construction would render meaningless the reference to "four years" which appears in SDMC section 24.0545. "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." 2A Norman J. Singer, Sutherland and Statutory Construction Section 46.06 (5th ed. 1984). Moreover, "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Id.* Plainly stated, the four year vesting provision for the LORP is still a requirement that remains unaffected by Proposition E.

Therefore, it is conceivable that between now and 1998 a Council member could serve a full term (one of the abnormal three year terms) and then leave office without the four years of creditable service necessary to vest in the LORP. Although this scenario may seem hypothetical in nature, the issue is germane because the individual who will soon be elected to represent District 8 must make an informed decision about whether or not to join the LORP.

RECOMMENDATION

We recommend that you explain the possible consequences of the recent Charter change to the Retirement Board, City Auditor and the Council. If a temporary or permanent change in the LORP vesting requirements is desired or suggested by any interested party, that change can be formally proposed to the Council.

Any future change to the LORP in response to Proposition E would be a change in retirement benefits. The Charter provides that in the legislative process of enacting a benefit change to any plan administered by the Retirement System, the Council is the exclusive body to consider and debate the policy underlying that action, subject only to approval by a majority vote of the members of the affected plan.

However, the Council's prerogative to make a change in benefits is subject to another important limitation. The Charter vests fiduciary oversight powers with the City Auditor and the Retirement Board. As trustees of the Retirement Fund, the Retirement Board and the Auditor must be independently satisfied that any change in benefits is structured in a way that does not breach the fiduciary duties owed by the trustees to the beneficiaries of the trust.

Please call if you have any further questions.

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By

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