

MEMORANDUM OF LAW

DATE: August 31, 1993

TO: Bob Lawrence, Principal Accountant, Auditor &
Comptroller Department

FROM: City Attorney

SUBJECT: Retroactive Salary Increases

A City department head recently asked the Auditor and Comptroller about the propriety of granting retroactive merit raises to certain unclassified employees in his department. You, in turn, asked our office to research the legality of such an action.

Article XI, Section 10 of the California Constitution, applicable to charter cities, expressly precludes the granting of extra compensation to public employees after service has been rendered and performed in whole or in part by the employee. The only exception recognized in the case law is when a public employee's salary is adjusted retroactively to a date when the level of compensation was indefinite and subject to future determination. See, *GAI v. City Council*, 63 Cal. App. 3d 381, 390 (1976); *Seymour v. Christiansen*, 235 Cal. App. 3d 1168, 1178 (1991). For example, a retroactive salary adjustment processed after resolution of a disciplinary or disability proceeding falls squarely within the recognized exception.

Therefore, a retroactive salary increase to an employee is possible only when a factual basis exists establishing the employee's legal entitlement to a higher level of compensation than that paid by the City for past services rendered. Absent such facts, under any other circumstance it would be unlawful to grant or process a retroactive salary increase to a public officer or public employee.

If you have further questions, please contact me.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

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