

MEMORANDUM OF LAW

DATE: October 11, 1993

TO: Mary Ford, Savings Plan Administrator

FROM: City Attorney

SUBJECT: SPSP Plan Amendments

Risk Management is currently planning to amend the Supplemental Pension and Savings Plan ("SPSP") to allow the distribution of funds following termination, retirement or death to all affected employees on a quarterly basis.

At this time, the plan, pursuant to Section 9.04 provides for distribution to an individual after an application for benefits is filed. If an employee fails to file an application for benefits form within thirty (30) days of separation from service, the Risk Management department automatically distributes the funds to the former employee.

There is no legal bar to the change you propose. Certain changes to Internal Revenue Code ("IRC") regulations pursuant to the Unemployment Compensation Act of 1992 provide that an employee must be notified no earlier than ninety (90) days, and no later than thirty (30) days before distribution of his or her options with regard to the new rollover provisions of the IRC which basically provide that monies may be transferred from one qualified pension plan, an IRA or to another qualified pension plan without any tax consequences. Assuming these IRC regulations are complied with, the change proposed by Risk Management is acceptable.

Although the proposed changes are permissible, certain procedures must be followed. Currently, a former employee may receive a distribution in as little as two weeks time. With the change, an employee may have to wait as much as ninety (90) days before receiving his or her monies. This constitutes a change in benefits and must, therefore, be met and conferred on by management and the labor organizations.

Additionally, the SPSP document provides in Section 11.01 that amendments to the plan, except those necessitated by changes in the law, must be put to a vote of plan members. Although the proposed change may be tangentially affected by the previously noted IRC regulations, the change is not mandated by law.

Therefore, the change must be put to a vote of the affected employees.

If you have any other questions, please call me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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