

MEMORANDUM OF LAW

DATE: April 12, 1994

TO: Lawrence B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Payment of Rehabilitation Costs by Retirement System

As a result of changes in Workers' Compensation rules, Risk Management is seeking to rehabilitate workers who may be disabled from one job by placing them in alternate positions in the City. Because this could benefit the Retirement System by reducing the number of disability retirements and thus preserving the fund, you have asked if the Retirement System could participate financially in this program.

ANALYSIS

The analysis of this proposal must start with the San Diego City Charter ("Charter"). The Charter gives the City Council the power "to establish a retirement system and to provide for death benefits" for employees. The City Council may also provide for the retirement with benefits of an employee disabled by injuries on the job, for death benefits for employees killed in the line of duty, and for the retirement with benefits of an employee with ten (10) years or more of service who suffers a non-industrial disability. Charter section 141.

The Charter further authorizes the creation of the Retirement Fund, and specifies: "Such fund shall be a Trust Fund to be held and used only for the purpose of carrying out the provisions of this Article." Charter section 145.

Thus, the Charter specifically limits the uses of the Retirement Fund to the purposes laid out in Article IX of the Charter.

That Article does not allow or suggest that the retirement system rehabilitate disabled workers.

The San Diego Municipal Code ("SDMC") complements the Charter. It sets forth the purpose "to recognize a public obligation to City employees . . . by making provision for retirement compensation and death benefits . . . and to provide a means by which City employees who become disabled may be replaced without inflicting hardship on the employees removed." SDMC

section 24.0100. In other words, the Municipal Code emphasizes removing disabled employees.

While the System can and must pay all the actual costs of its own operation, 70 Op. Att'y Gen. 277 (1987), it moves onto terra infirma when paying for other services. Although your point that this reimbursement could well reduce the expenses of the trust fund in the long term is well taken, spending trust fund money for services other than those authorized in the Charter cannot be countenanced.

However, the time may be ripe to amend the Municipal Code and the Charter to keep pace with national developments, and particularly, with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq., with its emphasis on rehabilitating disabled workers and keeping each person productive at his or her level of ability.

In 1981, the Retirement System and Long Term Disability plan were coordinated to provide an overall package to disabled workers. Given the changes over time in both of those programs, which were not always coordinated, and given the new emphasis on accommodating disabled workers instead of simply providing for their sustenance, your idea has a great deal of merit.

#### CONCLUSION

The Charter as currently written does not permit retirement trust funds to be used for rehabilitation services.

We would be happy to work with you to effect the necessary changes. As you know, we are preparing comprehensive Charter changes regarding the Retirement System for presentation on the November ballot, and we could work together to fold this into those changes.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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cc D. Cruz Gonzalez

Lori Etherington

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