

MEMORANDUM OF LAW

DATE: April 27, 1994

TO: Lawrence B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: General Member Representative - Lifeguard Safety  
Member Eligibility

You have asked whether a lifeguard, a safety member in the City Employees' Retirement System ("Retirement System") can run as a candidate for one of the three seats on the Board of Administration ("Board") designated for "general" members. After reviewing the Charter for The City of San Diego ("Charter"), the San Diego Municipal Code ("SDMC") and other relevant authority, we conclude that a lifeguard is eligible to run for one of the three "general" member seats on the Board. Our analysis follows.

DISCUSSION

The composition of the Retirement System's thirteen member Board is set forth in Article IX, section 144, and Article X, section 1, subdivision 7, of the Charter. Section 144 accounts for eleven of the members. It provides in pertinent part:

The system shall be managed  
by a Board of Administration which is  
hereby created, consisting of the  
City Manager, City Auditor and  
Comptroller, the City Treasurer,  
three members of the Retirement  
System to be elected by the active  
membership, one retired member of the  
retirement system to be elected by  
the retired membership, an officer of  
a local bank, and three other  
citizens of the City, the latter four  
to be appointed by the Council.  
(Emphasis added.)

Article X of the Charter, section 1, subdivision (7), governing the Transfer of Police and Fire Department Employees into the Retirement System, accounts for the remaining two members. It provides:

The membership of the Board

of Administration created by Article IX of the Charter, upon the taking effect of this amendment, shall be increased to the extent of one additional member to represent the Police Department and one additional member to represent the Fire Department, such members to be chosen by the members of the respective departments. (Emphasis added.)

Although neither section of the Charter referenced above expressly defines "member" as either a "general" or a "safety" member, we have no doubt that with the exception of lifeguards, section 144 refers to "general" members and Article X refers to "safety" members.

Support for our view is found in the legislative histories of these sections and the development of the current Retirement System, established by the Charter in 1931. Membership in the original system was limited to public employees other than policemen and firemen, who were members of pension systems already in existence. As such, the reference in Charter section 144 to the three "member" positions on the Board to be elected by the active membership could only refer to "members" who were neither policemen nor firemen. Lifeguards were such "members." Although safety members now, they were originally general members of the Retirement System. As members, they were eligible to participate in the election process for one of the three "general" member seats on the Board.

Turning to Article X, it is also quite apparent to us that the reference to "member" in this Charter provision referred only to safety members of the police and fire departments. Article X, as enacted in 1931, governed the Police Relief and Pension Fund. Article XI governed the Firemen's Relief and Pension Fund. These Funds were created to "continue in force and make effectual pensions already existing" in favor of the Police force or the Fire force of the City.

On April 25, 1947, Article X was amended to combine the old Police and Fire Pension Funds into a system entitled "City Employees' Retirement System of all members of the Police and Fire Departments of The City of San Diego" for policemen and firemen who were regularly employed and members of their respective pension systems on June 30, 1946. Article XI was simultaneously repealed. Article X was further amended to provide that members of the Police Department and Fire Department employed after June 30, 1946, and thus ineligible to receive benefits under The Police and Fire Retirement System, would

become members of and entitled to all the benefits of the City Employees' Retirement System under Article IX of the Charter.

Effective May 20, 1949, Charter section 141 (in Article IX) was amended to recognize the reclassification of full-time lifeguards and the inclusion of the policemen and firemen hired by The City of San Diego after June 30, 1946. Specifically, this amendment provided that full-time lifeguards and policemen and firemen other than those who were members of a pension system on June 30, 1946, i.e., those members of The Police and Fire Retirement System described in Article X, would be eligible to retire at age fifty with twenty years of continuous service or at age fifty-five with ten years of continuous service.

On May 5, 1955, Article X was replaced by a new Article X, entitled "Transfer of Police and Fire Department Employees into the Retirement System." New Article X provided for the transfer into the City Employees' Retirement System all members of the Police and Fire Departments who were regularly employed and members of their respective Pension systems on June 30, 1946. Concurrent with the transfer, the composition of the Board was increased by two seats, one to represent the fire department and one to represent the police department. According to Ordinance No. 6501, adopted on May 10, 1955, safety members of either class in the Police and Fire Departments were given the right to elect one of their members to serve on the Board. San Diego Municipal Code section 24.0902.

Although lifeguards had been accorded safety member status by this date, they were not included in the election process for the newly created safety member seats. Perhaps this is explained by the fact that their size, then and now, relative to police and fire, is very small. Regardless, they are expressly excluded from participating in the safety member elections by virtue of their employment with the Parks and Recreation Department. Moreover, in practice, and in recognition of their previous general member classification, they have continued to vote for the general member seats despite their safety member status. We find nothing legally impermissible with this historical practice.

In light of the foregoing legislative history of the Charter sections governing the membership of the Retirement System and the composition of the Board, we are confident that "member," as used in Article X, refers to safety members and "member," as used in Charter section 144, with the exception of lifeguards, refers to general members. Just as general members would not be eligible to participate in the election of the two safety member seats, safety members, other than full-time lifeguards, would not be able to participate in the election for the three general member seats.

To hold otherwise, would create the possibility that either membership classification could stack the Board in its favor to the detriment of the other depriving that classification a voice on the Board. Clearly, such possibility is in conflict with the obvious intent and purpose of section 144 and Article X of the Charter to secure a board which contains a representative cross section of the diverse interests necessarily involved within a public service retirement system. *Grimm v. City of San Diego*, 94 Cal. App. 3d 33, 39-40 (1979).

#### CONCLUSION

Lifeguards have always been "members" of the current Retirement System. Initially, classified as "general" members, they have always been eligible to participate and have in fact, participated in the election process for the "general" member seats on the Board. Their subsequent reclassification to "safety" member status did not alter their voting rights or mandate their exclusion from the "general" member election process.

Although we suggest this issue be reviewed by the Board, we find no legal infirmities mandating the exclusion of lifeguards in the election process for the general member seats on the Board. We seriously doubt that either the framers of the Charter or the electorate amending the Charter provisions governing the Retirement System intended to disenfranchise lifeguards from the opportunity to participate in the election process for "member" representation on the Board.

We hope this Memorandum of Law addresses your concerns. Please let us know if we can provide any further assistance.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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