

MEMORANDUM OF LAW

DATE: July 23, 1996

TO: Cathy Lexin, Labor Relations Manager

FROM: City Attorney

SUBJECT: Supplemental Pension Savings Plan Amendment Vote

QUESTION PRESENTED

Under Article XI, section 11.01 of the City's Supplemental Pension Savings
a majority of votes cast constitute a "majority vote of all active particip
to the SPSP?

SHORT ANSWER

Yes. "Majority vote" has consistently been interpreted by the courts
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votes actually cast, not a majority of the votes eligible to be cast.

BACKGROUND

Recently an election was held to amend the SPSP by allowing the investment functions to be contracted out to a third party administrator. The vote was allowing this action. However, the plan document requires amendments be made by "a majority of all plan participants" and, while those actually voting were in favor of the proposal, the turnout resulted in a total vote of less than a majority of plan participants.

The election results have been challenged by an employee who maintains the plan language should refer to a majority of all plan participants, not a majority of those actually voting.

ANALYSIS

"Majority vote" is defined as a vote by more than half of the voters for a matter on a ballot. Black's Law Dictionary 955 (6th ed. 1990). Courts have designated the number of votes needed to elect a candidate or proposition voters voting at the particular election or on the proposed position. See U.S. 556 (1888) ("two-thirds vote of the qualified voters"); NLRB v. Standa 149 F.2d 435 (4th Cir. 1945) ("majority of employees in a unit"); NLRB v. W 149 F.2d 474 (5th Cir. 1940) ("majority of qualified voters"); Alaska Native Ass'n 417 F. Supp. 459 (D.D.C. 1974) ("majority of all eligible Natives"). Eligible voters participating in a vote are presumed to acquiesce in the choice made by the majority voting. See Carrol County v. Smith, 111 U.S. at 565; NLRB v. Standard Lime 148 F.2d at 438.

The SPSP amendment provision is similar to a provision in the Alaska Native Act which required a vote of a "majority of all eligible Natives" to establish a nonresident Alaska Natives. In the Alaska Native Ass'n case, an Alaska Native provision requiring a vote of "a majority of all eligible Natives" was interpreted to include all nonresident Alaska Natives who voted for or against the establishment of a nonresident Alaska Natives. In that case, the court noted that federal courts have consistently followed rules providing for the approval of a proposal by a specified majority of voters. The court construed as requiring the approval of the specified majority of those actually voting at the election unless the legislative intent clearly expresses otherwise. *Id.* at 438. The court emphasized the language of the statute in an effort to show a contrary intent specifically the requirement of a "majority of all eligible Natives." The wording, statutory language did not clearly demonstrate a legislative intent to require a majority of all eligible Natives.

"majority of all eligible Natives" rather than a majority of Natives actual. Similarly, in the SPSP document, the drafter's intent did not contemplate a all plan participants to vote or otherwise have an invalid election. Rather, those who do not vote are deemed to have agreed with the majority opinion of those who did vote in previous elections, following the logic of the cited cases, have construed a majority of votes cast.

Section 11.01 of the SPSP should be interpreted in a manner consistent with

interpretations of election laws. Like the provision in Alaska Native Ass' of approval of all active participants requires nothing more than a majority of participants actually voting on the issue rather than all active participants. Both state and local government election rules contain language that require a majority of votes actually cast in an election. The San Diego City Charter section 10, Elect "majority of votes cast." Similarly, California Elections Code section 107

receiving a majority of votes to be declared elected ("majority of all votes cast" indicates an interpretation contrary to the requirements of both statutes under Section 11.01. Accordingly, a vote to approve an amendment to the SPSP requires a majority of all participants voting on the issue.

CONCLUSION

Election law consistently holds that a "majority vote" means a majority of

To interpret "majority vote" as a majority of all voters who are eligible to vote in elections where voter turn-out is low. Democracy, as we know it, would thus require a majority of all eligible voters. Similarly, amendments to the SPSP must be determined by a majority of the voters. The law compels the conclusion that the current voting policy for the SPSP, which requires a majority of votes actually cast, results in a valid election result.

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