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Office of
The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: December 10, 1991
TO: Larry B. Grissom, Retirement Administrator
FROM: City Attorney
SUBJECT: Budgetary Authorizations

You have asked for a memorandum which cites the appropriate authority which allows the City of San Diego ("City") to charge the City Employees' Retirement System ("CERS") for various services and which requires CERS to pay for these services. Our response follows:

BACKGROUND

Section 40 of the Charter of the City of San Diego ("Charter section 40") provides that "the City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties." Charter section 40 further provides that the City Attorney "shall perform such other duties of a legal nature as the Council may by ordinance require" San Diego Municipal Code ("SDMC") section 24.0910 provides that "the City Attorney shall designate one of his staff to advise and represent the Board of Administration in the administration of the Retirement System. Historically, the City has provided CERS with a number of administrative, legal and other services free of charge. Several years ago, the City began charging self supporting departments for these services. As a result, appropriate amounts were added to the CERS' budget. Noting the considerable amount of discussion between the Retirement Board and staff on this issue, you now ask for the authority for this change. This memorandum addresses your request.

DISCUSSION

Charter section 68 establishes a complete budget and accounting system of municipal receipts and expenditures. Under the budget and accounting system envisioned by the Charter, the City Council is required to prepare and pass an Annual Appropriation Ordinance. In addition, Charter section 72 provides that "accounts shall be kept by the Auditor and Comptroller for each item of appropriation made by the council."

With respect to CERS, Charter section 145 provides in pertinent part:

All monies contributed by employees of the City or appropriated by the Council or received from any other

source under the terms of this Article, Article IX, The Retirement of Employees shall be placed in a special fund in the City Treasury to be known as the City Employees' Retirement Fund,

. . . . Such fund shall be a Trust Fund to be held and used only for the purpose of carrying out the provisions of this Article.

Effective January 1, 1988, Administrative Regulation ("AR") 95.25 was revised. Under section 3.1 of the AR, it is City policy to "establish fees to recover the cost of providing certain services." According to the Cost Recovery Manual prepared on this subject:

The issue of cost recovery has become increasingly important as a slowing in the growth of General Fund revenues has reduced the City's ability to fund necessary services through traditional revenue services.

For your information, the Cost Recovery Manual offers guidelines for the analysis of cost recovery. It is intended as an aid in the establishment and revision of fees and charges.

Under the cost recovery system non-general fund revenues such as enterprise funds, independent corporations and the CERS trust fund are billed for services performed by City departments. As a result, certain "general fund" departments such as City Attorney, Auditor, Treasurer, Risk Management and Financial Management began charging CERS for their services. The amount of money billed by each department varies according to the services provided. The procedure for allocating the debits and credits associated with cost recovery is set forth in the Annual Appropriations Ordinance. Importantly, the preparation and passage of the Annual Appropriations Ordinance signifies the City Council's concurrence with the City's cost recovery policy.

The fact that the legal services included in the cost recovery program were historically provided free of charge is of no legal significance. The Charter and SDMC authority cited in this memorandum merely provide that the City Attorney shall provide legal services to CERS. They do not require that these services be provided free of charge. Quite frankly, the economic realities of the present environment no longer allow the performance of these services free of charge. Practically speaking, the cost recovery program utilized by the City provides a more realistic approach to municipal finance. Each non-general fund department now pays for its share of the costs associated in performing its responsibilities. Hopefully, this memorandum has addressed your concerns. Please contact me if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Lorraine L. Etherington

Deputy City Attorney

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