

MEMORANDUM OF LAW

DATE: June 5, 1986

TO: City Treasurer

FROM: City Attorney

SUBJECT: Transfer of Deferred Compensation Funds

Your memorandum of May 20, 1986, subject as above, asks our opinion whether it is legally permissible to transfer the Deferred Compensation account of John Sullivan from The City of San Diego to The City of Los Angeles. We have reviewed the applicable statute and advise you that you may make the transfer.

John Sullivan [REDACTED] was an employee of The City of San Diego and was a participant in the City's Deferred Compensation Plan. As I understand the facts, Mr. Sullivan has terminated his employment with San Diego and accepted employment with The City of Los Angeles.

The City of Los Angeles has a section 457 Deferred Compensation Plan similar to San Diego's. The funding media for both plans is the Hartford Life Insurance Company. The City of Los Angeles has written to your office, by letter dated May 15, 1986, indicating it has agreed to accept a transfer of Mr. Sullivan's deferred compensation funds from our plan.

The law governing transfer of deferred compensation funds is set forth in section 1.457-2(k) of the Federal Tax Regulations (1986 edition). That section speaks to plan-to-plan transfers of former participants and provides as follows:

- (k) Plan-to-plan transfers. The plan may provide for the transfer of amounts deferred by a former participant to another eligible plan of which the former participant has become a participant if the following conditions are met:
  - (1) The entities sponsoring the plans are located within the same State (as that term is used in Sec. 1.457-2(c)(1),
  - (2) The plan receiving such amounts provides for the acceptance of the amounts, and
  - (3) The plan provides that if the participant separates from service in order to accept employment with another such entity, payout will not commence upon separation from service, regardless of any other provision of

the plan, and amounts previously deferred will automatically be transferred. Emphasis added.

Federal Tax Regulations Sec. 1.457-2.

The law is exceptionally clear on this matter. Mr. Sullivan a former participant in San Diego has become a participant of the Los Angeles plan, both plans are in California, and the Los Angeles plan coordinator has agreed to accept the transfer.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

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