



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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NATIONAL PENSION EXPERT SAYS CITY AND EMPLOYEES ARE SUBSTANTIALLY EQUAL PARTNERS IN FUNDING PENSION

A national pension expert has issued a legal opinion that the City and its employees are substantially equal partners in funding San Diego's pension plan. San Diego City Charter section 143 says the City "shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances" and "shall not be required to contribute in excess of that amount."

On Friday, the board of the San Diego City Employees Retirement System (SDCERS) will meet to discuss a staff proposal to require the City to make up about \$80 million annually in investment losses and changes in actuarial assumptions, leaving the City to pay far more than a "substantially equal" share of costs.

In a written opinion released Friday, attorney Norman S. Milks of K&L Gates stated:

"The City *does not* have an obligation to fund all except some small piece of the ultimate benefit, nor to make up for poor investment performance entirely on its own. Instead, the City and its employees, by substantially equal contributions, fund their respective shares of the whole."

The K&L Gates law firm has over 1,800 attorneys in 36 offices on three continents. Mr. Milks, a partner in K&L Gates, has practiced law exclusively in the employee benefits, including tax-qualified retirement plans field for more than 30 years and is among the leading experts in this area of practice. He was formerly with the Employee Plans Technical and Actuarial Division of the Internal Revenue Service in Washington D.C.

Mr. Milks went on to explain Charter section 143:

"Nothing contained in this provision, however, states that extra funding required due to investment losses or other failure of SDCERS to satisfy the actuarial assumptions of the Board's selected actuary, however reasonable were to be the sole responsibility of the City. Nor is there the statement that the City is to fund the employees' portion of the benefit cost, except for the limited obligation to fund past service benefits. On the contrary, this expense and the cost to fund other items not specifically singled out are, it would seem, to be shared on a substantially equal basis."

Concurrent with release of K&L Gates' opinion, the San Diego City Attorney's office released a 1954 opinion from its office rendered at the time Charter section 143 was adopted by San Diego voters. The opinion, written by the attorney who drafted the charter section, indicates that investment returns are to jointly inure to the benefit and detriment of the City and its employee partners equally:

“For instance, if the interest paid on the investment of the trust fund increases, the contributions of the City and the employees can be either decreased or proper credit given to those accounts. If the rate of interest is decreased the ordinance gives the Board of Administration, upon the recommendation of the actuary, the authority to require the employee and the City to contribute more, so that the result contemplated by the formula of the retirement plan will be secured.” (emphasis added)

SDCERS will conduct a hearing on Friday to discuss this issue. "SDCERS needs to follow the City Charter," said City Attorney Jan Goldsmith. "It is the equivalent of our local Constitution."

Mr. Goldsmith's letter to SDCERS is attached. Exhibits to the letter will follow by separate emails – (Part II & Part III).

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