



---

# San Diego City Attorney Jan I. Goldsmith

---

## NEWS RELEASE

**FOR IMMEDIATE RELEASE: June 17, 2010**

Contact: Gina Coburn, Communications Director: (619) 533-6181

### **COURT FINDS PENSION BOARD VIOLATED LAW IN SETTING CITY'S ANNUAL PENSION CONTRIBUTIONS**

The Fourth District Court of Appeal issued an opinion (attached) on Monday, June 7, ruling that the San Diego City Employees Retirement System ("SDCERS") violated the law in adding tens of millions of dollars to the City of San Diego's annual pension contributions.

In August through November, 2003, SDCERS undercharged over 2,000 employees the true cost of purchasing over 6,500 years of service for their pensions. In November, 2007, the SDCERS Board of Trustees decided to charge the City annually to correct the underfunding caused by the 2003 undercharges. The total amount is estimated to exceed \$36.5 million.

In striking the Board's decision of November, 2007, the court of appeal stated:

"When the board decided to charge the City for the underfunding, that decision was in violation of the law and thus exceeded its power."

In response to SDCERS' argument that it has "plenary authority to administer retirement system assets, including the decision to charge the City for the shortfall," the court stated:

"This contention is unavailing because while SDCERS had exclusive authority to administer plan assets, it did not have the plenary authority to evade the law."

Specifically, the court found that SDCERS violated the Municipal Code and Charter section 143. That section states, among other things, that the City "shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances."

The court rejected SDCERS' argument that section 143 did not apply:

"Charter section 143 thus confirms that the City must only contribute payments substantially equal to those of the employee for *normal* retirement allowances. The employee must bear the cost of any *additional* contributions."

(MORE)

Since 2007, SDCERS has been charging the City for these costs as part of the City's annual pension contribution. The next annual payment is due July 1. San Diego City Attorney Jan Goldsmith has demanded that SDCERS remove the charge from the July 1 invoice and reimburse the City for past payments. "All we ask is that they follow the law," Goldsmith said.

This is not the first time SDCERS has been found in violation of Charter section 143. Earlier this year, SDCERS was found by Judge Jeff Barton to have violated Charter section 143 in seeking a \$177 million contribution from the City. Judge Barton threw out SDCERS' claim.

Additionally, in April the City filed a lawsuit seeking an order of the court mandating that SDCERS apply the contribution formula set forth in section 143. In May, SDCERS did agree to stop charging the City for all costs associated with disability retirement and, instead, include the "retirement" portion of disability in the "substantially equal" calculations to be shared by employees and the City. This will save the City about \$2.6 million annually. It does underscore the fact that SDCERS illegally charged the City for disability costs for many years.

"I just hope someone over at SDCERS is beginning to get the message that it's not OK to violate the law," Goldsmith stated. "I really don't want to spend the next few years litigating with our pension board. They should correct these illegalities now and focus their attention on getting solid investment returns."

###