



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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SDCERS ADDS DISABILITY RETIREMENT COSTS TO “SUBSTANTIALLY EQUAL” CONTRIBUTIONS OF CITY EMPLOYEES

In a change from past practice, SDCERS' Board voted today to include disability retirement costs in the “substantially equal” contributions of employees under the City of San Diego pension plan. Historically, SDCERS has charged all disability costs to the City. The change reduces the City's annual required contribution to the pension fund by \$2.6 million.

San Diego City Attorney Jan Goldsmith commented that he is pleased that one aspect of the legal conflict between SDCERS and the City appears to have been resolved. “Clearly, SDCERS has been misapplying our City Charter for years,” said Goldsmith. “This is a first step in making needed corrections to comply with Charter section 143.”

The pension reform committee first raised the issue of whether disability costs should be shared between employees and the City in its 2004 report. In August, 2006, SDCERS CEO, David Wescoe, wrote a memorandum explaining that disability costs have been and were legally the City's sole obligation. A legal opinion from SDCERS' attorneys published on September 18, 2006, concluded:

“Unlike the shared cost of funding normal retirement allowances, the Municipal Code places the entire funding burden for disability allowances on the City.”

However, an opinion published by the City Attorney's office on January 21, 2010, concluded that disability retirement costs should be included and shared on a “substantially equal” basis between employees and the City. An April 2, 2010, opinion from independent legal counsel K&L Gates confirmed that conclusion. The City Attorney's office communicated its opinion to SDCERS by letter dated April 9, 2010.

The decision includes in the “substantially equal” calculation the “disability retirement cost” which is the actuarial equivalent of the employee's normal retirement allowance accrued as of the date of the disability retirement, but does not include any excess amounts granted by the City.

The City has a pending lawsuit against SDCERS seeking a court order that SDCERS follow Charter section 143 which requires that the pension system be funded through substantially equal contributions of the City and employees. A hearing on the City's claim previously scheduled for July has been rescheduled for September. ###