



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

FOR IMMEDIATE RELEASE: May 4, 2010

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

City seeks court enforcement of City Charter on pension contributions

San Diego, CA: With unanimous city council approval, the city attorney has filed a petition for writ of mandamus (attached w/out exhibit) seeking a court order requiring San Diego City Employees Retirement System (SDCERS) to comply with City Charter section 143. That section states:

"The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past services of the employees."

The Board has refused to apply Charter section 143 as written and has, instead, decided that the City is solely responsible for extra funding needed to make up for investment and other losses in order to ensure that retirement allowances can be paid.

In November 2008, a Superior Court Judge rejected a comparable position now asserted by SDCERS and enforced Charter section 143 as written. SDCERS appealed that case, which remains on appeal.

In April 2010, another Superior Court Judge dismissed a \$177 million claim filed by SDCERS on the basis that SDCERS failed to follow Charter section 143.

"SDCERS seems to have trouble following our City Charter, particularly section 143," City Attorney Jan Goldsmith stated.

Goldsmith pointed out that the City Charter is the City's Constitution and must be followed. Goldsmith issued the additional comments explaining why this case was initiated:

"The 'substantially equal' issue under Charter section 143 has been festering for at least 6 years since it was raised by the Pension Reform Committee in 2004, the former President of the Chamber of Commerce, the San Diego Taxpayers Association and the Citizens' Fiscal Sustainability Task Force. The city has received a legal opinion from a national pension legal

expert to the effect that Charter section 143 should be applied as written, an opinion that is consistent with that of the attorney who drafted the Charter provision in 1954. This legal issue needs to be finally resolved.

Whether the city caps employees' contributions is an issue for negotiation between labor and management, not something to be imposed by the pension board. The City Charter is clear that city taxpayers and city employees are substantially equal partners in our pension plan and share in profits and losses unless specifically agreed otherwise. I should emphasize that they share in profits under Charter section 143.

The pension board should apply the law as it is written and allow the parties to negotiate different contribution levels if they choose to do so.”

###