MEMORANDUM OF LAW

DATE: August 14, 1986

TO: Retirement Board
FROM: City Attorney
SUBJECT: 13th Check case settlement distribution; request by twenty-four "nonclass action" retirees

As a result of a communication presented to the Board at its June 20, 1986 meeting concerning payment of a 13th Check case distribution to those retirees who were not part of the Andrews litigation, we were requested to provide an opinion as to the authority of the Retirement Board (herein "Board") to make such payment.

The facts and claims underlying the Andrews case are well and fully known to members to the Board and any further recitation at this time is not required. The case was disposed of ┌after an adverse court ruling┘ by negotiated settlement and distribution to the class action participants. The issue now facing the Board concerns the legality of effecting further distribution to twenty-four retirees who did not participate in the litigation. Their presentation was put forth to the Board by Joseph Shaw on July 18, 1986.

The Board is the sole authority, under the ordinances of the City, to determine the conditions under which persons may be admitted to retirement benefits. ┌Charter Sec. 144.┘ To the extent that the ordinances require procedural guidance, the Board is empowered to establish rules and regulations as it may deem proper. ┌Section 144.┘ The Board is obliged to comply with the provisions of the City Charter and the retirement ordinances in furtherance and fulfillment of its duties and responsibilities. The Board is also obliged ┌as is the City┘ to comply with final orders of a court of competent jurisdiction in respect to interpretations of and decisions as a result thereof on operation of the system. ┌California Constitution, art. VI, sec. 1.┘

The question is now posed to us as to whether the Board may legally make a distribution of retirement system funds to twenty-four retirees who chose not to participate as part of the "class" in the class action suit ┌Andrews case┘ more commonly called the 13th Check case. The legal principle behind and primary purpose of class action suits is that a group of similarly aggrieved persons may join together for the purpose of

litigating a common issue. All individuals electing to become part of the "class" are bound by the decision in the case and may not thereafter disavow its results. It is intended to promote time and financial efficiency in the judicial process.

However, not everyone similarly situated and aggrieved is required to join the "class." Those who elect to remain outside the "class" in a class action suit are not directly bound by the result in the event of an adverse result nor are they automatic beneficiaries of a favorable decision. They may not lay a valid, immediate claim to any monetary award. It requires additional individual ╒or joint╕ action on their part to further convince and prevail on the matter in a court of competent jurisdiction.

We have reviewed the Charter and retirement ordinances promulgated in pursuance thereof and we can find no authority for the Board to pay out a 13th Check case settlement distribution to any retiree who was not a class action participant. The distribution was effected as a result of a negotiated settlement for and on behalf of the members of the "class." Any action by the Board in that regard would be tantamount to administrative amendment of the named class and that is beyond the authority of the Board. Any changes to the class would be a judicial function. The inquiry, therefore, regarding the authority of the Board to do so is well taken. It is our opinion and you are advised that you may not, on your own volition, make any such distribution to a retiree who was not a named member of the class.

The twenty-four similarly situated retirees, whose request gives rise to this opinion, elected in writing to opt out of the class action suit. The letter of waiver which each signed and submitted to counsel for the plaintiff in the 13th Check case stated they did not wish to participate. It further stated that each retained an individual right to pursue legal recourse in the event he or she did not wish to be a member of the class. They still possess that right.

The question then becomes whether the twenty-four individuals are now foreclosed from pursuing any judicial remedy. That is, has a sufficient period of years passed which would bar them from proceeding; have they allowed the statute of limitations to pass?

In regard to the issue of the statute of limitations, I refer you to a more detailed discussion in my Memorandum of Law 86-96 in which I discuss the matter as it impacts retiree William PonCavage. For present purposes here, I need only say that the statutory limit in this situation is four (4) years.
Accordingly, the twenty-four retirees may still pursue further

judicial remedy.

As an aside ┌but for the information of the Boardσ retiree Joseph Shaw is represented by Attorney Ralph Graves in this matter. Mr. Graves has communicated with our office in regard to this matter and we have advised him of our conclusions herein.

JOHN W. WITT, City Attorney
By
Jack Katz, Chief Deputy

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