

Deferred Compensation Plan BOARD REPORT 10-29

Date: July 26, 2010
To: Board of Deferred Compensation Administration
From: Staff
Subject: Deferred Compensation Plan Trustee

*Board of Deferred
Compensation Administration
Eugene C. Canzano, Chairperson
Richard Kraus, Vice- Chairperson
Sangeeta Bhatia
Cliff Cannon
Sally Choi
John R. Mumma
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Recommendation:

That the Board of Deferred Compensation Administration approve staff's proposed correspondence to the Office of the City Attorney regarding the role of trustee for the City of Los Angeles Deferred Compensation Plan.

Discussion:

At its meeting on June 15, 2010, the Board requested that staff develop draft correspondence to the City Attorney's Office requesting clarification of the question of which entity is acting in the capacity of trustee for the City's Deferred Compensation Plan and what that entity's responsibilities are relative to that role. At its meeting on July 20, 2010, the Board considered staff's proposed correspondence, discussed some potential changes to the wording of the questions, and asked staff to return the matter to the Board for reconsideration. The revised correspondence is provided as Attachment A.

The balance of this report is excerpted from Board Report 10-24.

As part of its research, staff reviewed the minutes and materials from a Board meeting in 1998 in which the City Attorney's Office provided direction to the Board concerning the ordinance which would place Plan assets into trust. In 1996 the Federal government passed the Small Business Job Protection Act. This act contained a provision requiring that plan sponsors of Internal Revenue Code Section 457 plans place plan assets into a trust, custodial account or insurance contract for the exclusive benefit of Plan participants and their beneficiaries.

In preparing to implement this requirement, staff and the Board's consultant developed a report with recommended changes to the Administrative Code as well as a draft trust agreement (Attachment B). The proposed Administrative Code changes would have had the City Council designate the Board as the Plan's trustee; the draft trust agreement would have spelled out the Board's duties and responsibilities relative to that role. At the Board meeting where this report was considered, the minutes reflect that City Attorney staff advised the Board that they could not be designated as trustee (Attachment C). The ordinance ultimately prepared by the City Attorney's Office and adopted by the City Council indicated that Plan assets "shall be held **by the City** in trust..." (emphasis added) but were not more specific (Attachment D).

Related to these issues is the question of the degree of independence provided to the Board in its decision-making authority. In 1999 the City Council made a further amendment to the City Administrative Code in which it granted contracting authority to the Board. As part of this action, however, it also added language to retain its power to veto decisions of the Board given the likelihood that the Charter Section in effect at the time providing veto power over Board/Committee decisions would shortly be eliminated under Charter reform efforts then underway (Attachment E).

In 2004 the Board selected Nationwide Retirement Solutions as the Plan's third-party administrator. As a result of participant protests, the City Council vetoed that decision and remanded it back to the Board. Nationwide sued the City over this veto, arguing that the City's Deferred Compensation Plan was a retirement/pension plan under the State Constitution and, pursuant to an amendment of the Constitution under Proposition 162, the City Council could not interfere with decisions of the Board. The City prepared a brief in this case (Attachment F) as did Nationwide (Attachment G). The suit was dismissed on a technicality and the court never rendered a decision on the question of the status of the Plan or the Board under the State Constitution.

Staff's draft correspondence requests clarification of which specific City entity is acting in the role of trustee. It further acts for more specificity regarding the specific responsibilities of the trustee.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez