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January 13, 2016

MCERA Board of Trustees and
Administrator Jeff Wickman
Marin County Employee Retirement System
1 McInnis Parkway, #100
San Rafael CA 94903

Board of Trustees and Mr. Wickman,

Last time I was here I spoke at some length about possible failures of this board in its fiduciary duties to its plan members and possible failures in its duty to the public to minimize employer contributions.

I have since learned that your duty to the public is not fiduciary, my mistake. Rather, it is constitutional, under Article 16, Section 17, paragraph (b), the so-called contribution minimization provision.

Subsequently, I sent you a letter with a number of questions pertaining to what I believe are deficiencies in Ms. Dunning's analysis of the situation. I doubt she will respond to me. I hope you will insist that she respond to you, and that you will make her response available to the public.

Your Board has broad authority to investigate virtually any aspect of the plan ... not to invalidate, but to investigate. In fact, according to the court in *McIntyre v Santa Barbara ERS*, a retirement board cannot fulfill its mandate, "unless it investigates applications and pays benefits only to those members who are eligible for them."

Yet Ms. Dunning says that in the absence of a prior order from a court of appeal to invalidate a benefit, there is no basis for you to even *investigate* the benefit's legitimacy. This defies logic.

In an effort to reduce the matter to its most basic elements let me propose a hypothetical. Suppose that rather than discovering violations of section 7507, the Grand Jury had discovered that at every board or council

meeting in which the enhanced benefits had been granted, a quorum was not present. There is no doubt the benefits would have been granted unlawfully.

Suppose further, that when presented with this information, the boards and councils had chosen to do nothing. Suppose even further, as is the case with the all-to-real violations of section 7507, that no court of appeal has yet been approached, and therefore no court of appeal has authorized you to invalidate the benefits.

Does Ms. Dunning maintain that, in the face of such a clear violation of the law, there is no basis for you to even *investigate* the Grand Jury's findings in order to confirm their validity; that you should do nothing; that you may not petition a court of appeal for guidance because no court of appeal has already given you authorization to invalidate the benefits?

She is sitting right here. Ask her?

In my hypothetical, the violations are indisputable. Regarding section 7507 the violations are also indisputable. Failure to fully comply with 7507 has been acknowledged. The only difference is that you face the open question of whether less-than-full compliance with 7507, as admitted to by the four agencies, is sufficient to satisfy the law.

Who should answer that question? Ms. Dunning? Ask her. Ask her also for the basis of her answer. The fact is this. It is not Ms. Dunning's question to answer. Nor is it mine. Nor is it even yours. The answer must come from a court of appeal.

This board should seek guidance from a court of appeal as to whether the benefits were unlawfully adopted, and if so, what to do about it.

This has gone on long enough.

Sincerely,

David C Brown