

David C Brown
25 Country Club Drive
Mill Valley CA 94941

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

Good morning trustees. My name is David Brown. I am from Mill Valley and I am a member of CSPP.

As I am sure you know, a retirement board of trustees may pay only benefits that are lawfully adopted. If a board of trustees has knowledge, or even suspects, that benefits were not lawfully adopted, it is required to petition a court of appeals for instructions.

California Government Code section 7507 lays out very specific requirements in both procedure and timing for disclosure to the public of the future costs of proposed pension enhancements.

The Marin County Civil Grand Jury in April 2015 found multiple violations of section 7507 by four Marin Agencies. Two of the four agencies, The County of Marin and The City of San Rafael, in their required responses to the Grand Jury effectively conceded they did not comply with the requirements of section 7507. The other two, Southern Marin Fire and Novato Fire Protection, either did not respond directly or said they cannot find evidence they complied with 7507. So they, too, effectively conceded the increases were not lawfully adopted.

To put this failure to fully comply with section 7507 in some perspective, CalPERS considers compliance with 7507 so important that it now requires agencies to certify in writing that they have complied with its requirements.

Please note that Calpers does not require certification of partial compliance, substantial compliance, or some other less-than-full measure of compliance. It requires certification of compliance. Period. Importantly, CalPERS will not fund a retirement benefit unless an agency has certified such compliance.

In light of the failure by the four agencies to fully comply with section 7507, what does your fiduciary duty now oblige you to do? Should you continue with business as usual? Should you perform your own independent investigation? Should you petition a court of appeal for guidance?

The answers to all these questions are obvious.

In *McIntyre v Santa Barbara County Employee Retirement System (2001)* the court said:

A retirement board is “required to administer the retirement system in a manner to best provide benefits to participants of the plan. It cannot fulfill this mandate unless it investigates applications and *pays benefits only to those members who are eligible for them.*”

Let me repeat that last part, “... and *pays benefits only to those members who are eligible for them.*”

The pool of funds available for retirement benefits is not infinite. If this board is making payments for benefits that were not lawfully adopted, it is improperly advantaging some beneficiaries at the expense of others whose benefits are entirely legitimate.

Again, let me repeat the last phrase. This board is improperly advantaging some beneficiaries *at the expense of others whose benefits are entirely legitimate.*

This goes to the very essence of your fiduciary duty.

Some weeks ago Ms. Dunning sent me a letter on your behalf in which she laid out numerous reasons why this board has no authority to invalidate the benefit enhancements cited by the Grand Jury. I accept Ms. Dunning’s conclusion that you do not have such authority, but her letter did not address whether the enhancements might have been unlawfully adopted and, if so, what you must now do. That is very much an open question.

Because of Ms. Dunning’s letter I want to be very clear about what I am and am not asking you to do today. I am not asking you to invalidate any benefits. I am not asking you to reduce any benefits. I am not asking you to claw back any benefits. I am simply asking you to acknowledge three things, and to then act as the law requires you to act:

First, that based on the available evidence there exists the very real possibility that the benefits in question were not lawfully adopted,

Second, that there exists the very real possibility that this board is not permitted to fund payment of those benefits,

Third, that in light of the uncertainty surrounding the benefits, you must discuss at a public meeting what your legal obligations are and what steps to take next.

This subject should be placed on your agenda as soon as possible. This is a formal request to do just that.

Thank you for your time.

Sincerely,

David C. Brown