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25 Country Club Drive  
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December 16, 2015

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

Dear Board of Trustees,

A retirement board of trustees may pay only benefits that are lawfully adopted. 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.

Thank you for listening attentively to CSPP's presentation on December 9, 2015 regarding the good faith issues raised by the Grand Jury as to compliance with California government code section 7507. These issues raise in our minds the necessity of the Board to agenda the item for discussion purposes leading to an investigation and clarification by a court.

We raised a number of reasons for our conclusion and asked questions as well. The open time discussion did not permit a dialogue to take place so we have restated them below. We request a formal response. In addition, the Chairman was absent from the meeting so he did not have the benefit of our presentation.

We look forward to your responses, your placement of the matter on your agenda and your eventual petition to a court of appeal to fulfill your obligations as a fiduciary.

1. Funds available to pay benefits are limited. If money is going to pay unlawfully granted benefits, less is available to pay properly authorized benefits. If the benefits in question were not lawfully granted, is the Board meeting its fiduciary obligation to preserve the resources of the retirement fund and to protect the interest of the large share of members who are *not* receiving the benefits?
2. If the benefits in question were not lawfully granted, is the board meeting its obligation, fiduciary or otherwise, to the public to ensure that substantial public monies are not being paid out improperly? Please discuss this obligation.
3. In *City of Santa Monica v. Gonzales* (2008) the court said, "... if the failure to comply with the procedural requirement invalidates the purpose of the statute, the statute is mandatory. In *Cal-Air Conditioning, Inc. v. Auburn Union School District* (1993) the court said, "... if the procedure is essential to promote the statutory design, it is 'mandatory' and noncompliance has an invalidating affect. Is it possible there are circumstances under which 7507 would be judged substantive and not procedural? Who should decide? The Board? Ms. Dunning? A court of appeal?
4. "Protect our Benefits" and "Orange County Sheriffs" concern attempts by granting agencies to rescind benefits that were originally lawfully granted. Please explain how these cases are relevant to the situation facing MCERA, in which the question is whether the benefits were lawfully granted in the first place.
5. Please address whether unlawfully adopted benefits can be vested and whether the California Rule applies to them?
6. Does not the board have broad authority (and the obligation) to investigate any prima facie case of potentially improper payment of benefits, with or without prior authorization from a court of appeal? Please explain your statement, "There does not appear to be a basis for MCERA to engage in the investigation you propose, referring to David C Brown's letter of September 5, 2015."
7. In light of the Grand Jury report, the responses from the subject agencies and relevant case law, there appear to be grounds for the matter to be placed on an agenda for discussion, which could lead to an investigation. When counsel states "there is no basis" for proceeding with an investigation, she is concluding that, as a matter of law, there is no basis for discussion or even investigation. How can one so conclude without discussion and investigation? Is counsel not presupposing the discussion, the results of an ensuing investigation and usurping the role of the Board in making such determinations?

8. If the benefits were improperly granted, what action is the board obligated to take? Permitted to take?
9. If there is a prima facie case the benefits were improperly granted, as evidenced by the Grand Jury report and the failure of the four subject agencies to state or demonstrate that they had complied with 7507, what action is the board obligated to take? Permitted to take?

Sincerely,

David C. Brown