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MEMORANDUM OF LAW

DATE: July 23, 1996
TO: Cathy Lexin, Labor Relations Manager
FROM: City Attorney
SUBJECT: Supplemental Pension Savings Plan Amendment Vote

QUESTION PRESENTED

Under Article XI, section 11.01 of the City's Supplemental Pension Savings Plan ("SPSP") does a majority of votes cast constitute a "majority vote of all active participants" to approve an amendment to the SPSP?

SHORT ANSWER

Yes. "Majority vote" has consistently been interpreted by the courts to mean a majority of the votes actually cast, not a majority of the votes eligible to be cast.

BACKGROUND

Recently an election was held to amend the SPSP by allowing the investment and administrative functions to be contracted out to a third party administrator. The vote was overwhelmingly in favor of allowing this action. However, the plan document requires amendments be made by a "majority of the plan participants" and, while those actually voting were in favor of the proposed amendment, low voter turnout resulted in a total vote of less than a majority of plan participants. Consequently, the election results have been challenged by an employee who maintains the plan language compels a majority vote of all plan participants, not a majority of those actually voting.

ANALYSIS

"Majority vote" is defined as a vote by more than half of the voters for a candidate or other matter on a ballot. Black's Law Dictionary 955 (6th ed. 1990). Courts have interpreted provisions designating the number of votes needed to elect a candidate or proposition to mean the proportion of voters voting at the particular election or on the proposed position. See Carrol County v. Smith, 111 U.S. 556 (1888) ("two-thirds vote of the qualified voters"); NLRB v. Standard Lime & Stone Co., 149 F.2d 435 (4th Cir. 1945) ("majority of employees in a unit"); NLRB v. Whittier Mills Co., 111 F.2d 474 (5th Cir. 1940) ("majority of qualified voters"); Alaska Native Ass'n of Oregon v. Morton, 417 F. Supp. 459 (D.D.C. 1974) ("majority of all eligible Natives"). Eligible voters not present and participating in a vote are presumed to acquiesce in the choice made by the majority of those actually voting. See Carrol County v. Smith, 111 U.S. at 565; NLRB v. Standard Lime & Stone Co., 148 F.2d at 438.

The SPSP amendment provision is similar to a provision in the Alaska Native Claims Settlement Act which required a vote of a "majority of all eligible Natives" to establish a thirteenth region for nonresident Alaska Natives. In the Alaska Native Ass'n case, an Alaska Native Claims Settlement Act provision requiring a vote of "a majority of all eligible Natives" was interpreted to mean a majority of all nonresident Alaska Natives who voted for or against the establishment of a thirteenth region. Id. In that case, the court noted that federal courts have consistently followed the proposition that election rules providing for the approval of a proposal by a specified majority of the electorate are to be construed as requiring the approval of the specified majority of those actually participating in the election unless the legislative intent clearly expresses otherwise. Id. at 467-468. The defendant in that case emphasized the language of the statute in an effort to show a contrary construction of the statute, specifically the requirement of a "majority of all eligible Natives." The court found that, despite the wording, statutory language did not clearly demonstrate a legislative intent to require approval of a "majority of all eligible Natives" rather than a majority of Natives actually voting. Id. at 468. Similarly, in the SPSP document, the drafter's intent did not contemplate a voting process that compels all plan participants to vote or otherwise have an invalid election. Rather, those participants who did not vote are deemed to have agreed with the majority opinion of those who did vote. Thus, all SPSP previous elections, following the logic of the cited

Cathy Lexin

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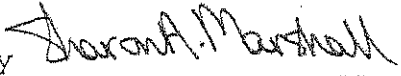
cases, have construed the voting results to rest upon a majority of votes cast.

Section 11.01 of the SPSP should be interpreted in a manner consistent with federal interpretations of election laws. Like the provision in Alaska Native Ass'n of Oregon, the requirement of approval of all active participants requires nothing more than a majority vote of all active SPSP participants actually voting on the issue rather than all active participants in the plan. Additionally, both state and local government election rules contain language that require a majority of all votes actually cast in an election. The San Diego City Charter section 10, Elections uses the language "majority of votes cast." Similarly, California Elections Code section 10705, indicates the candidate receiving majority of votes to be declared elected ("majority of all votes cast"). There is no clear indication that an interpretation contrary to the requirements of both state and local rules was intended under Section 11.01. Accordingly, a vote to approve an amendment to the SPSP requires a majority vote of all participants voting on the issue.

CONCLUSION

Election law consistently holds that a "majority vote" means a majority of the actual votes cast. To interpret "majority vote" as a majority of all voters who are eligible to vote would invalidate many elections where voter turn-out is low. Democracy, as we know it, would thus come to a halt. Similarly, amendments to the SPSP must be determined by a majority of the votes cast. Current case law compels the conclusion that the current voting policy for the SPSP, which deems a majority to be a majority of votes actually cast, results in a valid election result.

JOHN W. WITT, City Attorney

By 
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