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April 23, 2009

To: Honorable Board of Supervisors
Mendocino County Retirement Board

From: Jeanine B. Nadel, County Counsel

Subject: Mendocino County Retirement System

Op. No. 09-0385

In preparation for the joint meeting between the Board of Supervisors and the Mendocino County Retirement Board, I have prepared the following brief overview of the relative roles and responsibilities of each Board in managing the Mendocino County Retirement System. This is not a comprehensive review of every statute governing the retirement system.

Retirement Board

Beginning with the Board of Retirement, the Mendocino County Retirement System is governed by the provisions of the County Employees' Retirement Law of 1937, commonly known and referred to as the "37 Act". (Gov. Code § 31450 et seq.) In Mendocino County, the Board of Retirement consists of nine members. (Gov. Code § 31520.1.) Four of the members are appointed by the Board of Supervisors and are required to be qualified electors of the County who are not connected with the County government in any capacity, except one may be a member of the Board of Supervisors; two are elected by General Plan members; one is elected by Safety Plan members; one is elected by retirees; and the County Treasurer Tax Collector is the final member. All board members serve terms in accordance with the statute.

The duties and responsibilities of the Retirement Board members to the Plan and the Plan members are explicitly set forth in Proposition 162, adopted by the voters in 1992 and codified in Section 17 of Article XVI of the California Constitution. Specifically, the Retirement Board shall have the sole and exclusive fiduciary responsibility over the assets of the retirement system; and, shall also have the sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and the beneficiaries.

Article XVI, section 17 further provides that members of the Retirement Board shall discharge their duties with care, skill, prudence, and diligence with respect to the system solely in the interest of, and for the exclusive purposes of, providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A Retirement Board's duty to its participants and their beneficiaries shall take precedence over any other duty.

The members of the Retirement Board are required to diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless, under the circumstances, it is clearly not prudent to do so. And finally, the Retirement Board shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

The Retirement Board appoints the Retirement Administrator and staff for the administration of the Retirement Plan. Administrative expenses of the system are funded from the system, subject to the mandatory limitation of eighteen-hundredths of one percent (0.18%) as provided in Government Code section 31580.2.

The Retirement Board approves service retirement benefits, and reviews and takes action on applications for disability retirements. In this regard, the Board can retain counsel and medical professionals to assist them in the decision-making process.

The Office of County Counsel is the attorney for the Retirement Board (Government Code Section 31529; 31529.5) unless there is a conflict, in which case a private attorney can be appointed.

Board of Supervisors

The role of the Board of Supervisors in the management and operation of the system is governed both by statute and the State Constitution. The Board of Supervisors was responsible for establishing the retirement system. (Gov. Code § 31500.) As stated above, the Board of Supervisors is required to appoint four (4) members to the Retirement Board and determines the manner in which the elected members (two (2) General Plan members, and one (1) retiree) are elected. While the Retirement Board is responsible for adopting regulations for the administration of the system, the regulations only become effective once approved by the Board of Supervisors. (Gov. Code § 31525.)

Through its negotiations with the various County bargaining units, the Board of Supervisors has the responsibility to set benefits within the statutory parameters. The Board is required to provide notice of the benefit increase and an explanation of the financial impact that the proposed benefit change will have on the retirement system. (Gov. Code § 31515.5.) The Board of Supervisors may also provide for the contribution toward the payment of all or a portion of the premiums for retiree health care insurance coverage. (Gov. Code § 31691.) The Board of Supervisors is required to adjust the rates of interest and contributions of members in accordance with the recommendations of the Retirement Board. (Gov. Code § 31454.) The Board of Supervisors must appropriate enough funds to pay the contributions established as recommended by the actuary. If the Board does not appropriate these funds, the County Auditor is required to do so. (Gov. Code § 31584.)

JBN/ctm

cc: Tom Mitchell, CEO
Kristi Furman, Clerk of the Board
Sue Thornhill, Retirement Coordinator