



P.O. Box 942709 Sacramento, CA 94229-2709
888 CalPERS (or 888-225-7377)
TTY: (877) 249-7442 | Fax: (916) 795-3005
www.calpers.ca.gov

California Public Employees' Retirement System
Employer Account Management Division

March 7, 2016

Eddie Manfro, City Manager
City of Westminster
8200 Westminster Blvd., CA 92683

Dear Mr. Manfro;

This letter is concerning the City of Westminster (the City) and its position of City Attorney.

The California Public Employees' Retirement System (CalPERS) recently received an inquiry about the employment status and retirement eligibility of Richard D. Jones. The inquiry identified Mr. Jones as the City Attorney, and expressed concern regarding a recent change from city employee receiving CalPERS retirement benefits to an independent contractor. In following up on that inquiry, CalPERS requested additional information regarding contracts and agreements, years of service with the City, classifications held, the dates of those classifications, oath of office and time worked.

The City enrolled Mr. Jones into CalPERS membership effective September 1, 1993, as the City Attorney. The eligibility data for the appointment indicates it is an Optional Member position, and the City submitted an Election of Optional Membership form with the appointment. Since September 1, 1993, the City has reported full time contributions and service for Mr. Jones, and his account is currently credited with 22.062 years of retirement service credit with the City.

CalPERS reviewed the information provided by the City, including the Agreement between the City and the Law Offices of Richard D. Jones, and common law employment questionnaires. CalPERS also reviewed available web documents including the City's Municipal Code, membership documents submitted by the City on behalf Mr. Jones, and the service and contributions reported to CalPERS by the City on Mr. Jones' behalf.

CalPERS has now determined that Mr. Jones is not eligible for Optional membership in CalPERS, nor does documentation exist to show that he qualified for membership under compulsory membership provisions of the Public Employees' Retirement Law (PERL).

Optional Membership in CalPERS is defined by Government Code (G.C.) Section 20322:

20322.

(a) An elective officer is excluded from membership in this system unless the officer files with the board an election in writing to become a member. Upon electing to become a member, the officer may further elect at any time prior to retirement to receive service credit for his or her prior, excluded service by making the contributions as specified in Sections 21050 and 21051.

(b) As used in this part, "elective officer" includes any officer of the Senate or Assembly who is elected by vote of the members of either or both of the houses of the Legislature, and any appointive officer of a city or county occupying a fixed term of office, as well as officers of the state or contracting agencies elected by the people, and persons elected to a city council or a county board of supervisors.

CalPERS' has reviewed the City's Municipal Code, and we have found no ordinance establishing an office of City Attorney, or fixing a term of office. Mr. Jones is not occupying a City office, and does not have a fixed term of office; therefore, he is not in an optional member position and does not qualify for Optional membership in CalPERS.

Compulsory membership eligibility in CalPERS for part-time employees is dictated by Government Code Section 20305.

"20305.

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which

case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, "day" means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year."

The submitted agreement for Mr. Jones shows that the services performed are part-time, requiring attendance at City Council meetings, and other meetings as requested, and maintaining a minimum of 4 hours per week. The agreement also sets compensation for services "up to thirty hours per month". Mr. Jones required service of thirty hours per month does not meet the criteria of G.C. Section 20305 for compulsory membership.

Additionally, G. C. Section 20300 provides several exclusions to CalPERS membership. G.C. Section 20300(h) excludes from membership "persons rendering professional legal services to a city, other than the person holding the office of City Attorney, the office of Assistant City Attorney, or an established position of deputy City Attorney." The City has not established an Office of City Attorney; CalPERS deems service performed under the agreement between Mr. Jones and the City to be professional legal services excluded by G.C. Section 20300(h).

The City enrolled Mr. Jones into CalPERS membership effective September 1, 1993. Because Mr. Jones is not eligible for Optional Membership, and has never qualified for compulsory membership under G.C. Section 20305, and is performing service that is excluded by law, CalPERS has determined that the City enrolled and reported Mr. Jones in error. Payroll records indicate the City ceased reporting Mr. Jones to CalPERS as of September 2002.

Because all contributions reported on behalf of Mr. Jones were reported in error, the City must reverse all contributions previously reported on his behalf from September 1993 through September 2002.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several

months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Enclosed is an informational brochure on the General Procedures for Administrative Hearings.

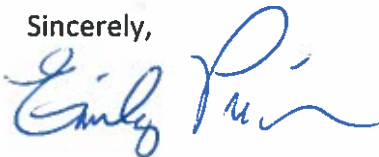
After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

Your appeal should be mailed to the following address:

RENEE OSTRANDER, Chief
Employer Account Management Division
P.O. Box 942709
Sacramento, CA 94229-2709

CalPERS remains committed to assisting our members in all matters related to their retirement within the statutory authority available to us. Should you have any further questions regarding this matter please do not hesitate to contact Christina Rollins, Manager of the Membership, Analysis and Design Unit, at (916) 795-2999.

Sincerely,



EMILY PEREZ de FLORES, Manager
Membership Management Section
Employer Account Management Division

Enclosure



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California Public Employees' Retirement System
Employer Account Management Division

March 7, 2016

Richard D. Jones


Dear Mr. Jones;

This letter is concerning your employment with the City of Westminster (the City) and your membership in the California Public Employees' Retirement System (CalPERS).

In following up on a recent inquiry concerning a change in the City Attorney's status from city employee receiving retirement benefits to an independent contractor, CalPERS requested additional information regarding contracts and agreements, years of service with the City, classifications held, the dates of those classifications, oath of office and time worked.

CalPERS' has reviewed the information provided, that includes the Agreement between the City and the Law Offices of Richard D. Jones and subsequent amendments, common law employment questionnaires, the City's Municipal Code, membership documents submitted by the City, the service and contributions reported to CalPERS by the City on your behalf, and available web documents. We have determined that you are not eligible for Optional membership in CalPERS, nor does documentation exist to show that you qualified for membership under compulsory membership provisions.

The City enrolled you into CalPERS membership effective September 1, 1993, as the City Attorney. The eligibility data for the appointment indicates it is an Optional Member position, and the City submitted an Election of Optional Membership form with the appointment. Since September 1, 1993, the City has reported full time contributions and service on your behalf, and your account is currently credited with 22.062 years of retirement service credit with the City.

Optional Membership in CalPERS is defined by Government Code (G.C.) Section 20322:

20322.

(a) An elective officer is excluded from membership in this system unless the officer files with the board an election in writing to become a member. Upon electing to become a member, the officer may further elect at any time prior to retirement to receive service credit for his or her prior, excluded service by making the contributions as specified in Sections 21050 and 21051.

(b) As used in this part, "elective officer" includes any officer of the Senate or Assembly who is elected by vote of the members of either or both of the houses of the Legislature, and any appointive officer of a city or county occupying a fixed term of office, as well as officers of the state or contracting agencies elected by the people, and persons elected to a city council or a county board of supervisors.

CalPERS' has reviewed the City's Municipal Code, and we have found no ordinance establishing an office of City Attorney, or fixing a term of office. Because you are not occupying a City office, and do not have a fixed term of office, you are not eligible for Optional membership in CalPERS.

Compulsory membership eligibility in CalPERS for part time employees is dictated by Government Code Section 20305.

"20305.

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which

case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, "day" means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year."

The submitted employment agreements show that the services performed are part-time, requiring attendance at City Council meetings, and other meetings as requested, and maintaining a minimum of 4 hours per week. The agreement also sets compensation for services "up to thirty hours per month". The required service of up to thirty hours per month does not meet the criteria of G.C. Section 20305 for compulsory membership.

In addition to eligibility criteria, the Public Employees' Retirement Law (PERL) provides several exclusions to CalPERS membership. G.C. Section 20300(h) excludes from membership "persons rendering professional legal services to a city, other than the person holding the Office of City Attorney, the Office of Assistant City Attorney, or an established position of deputy City Attorney." The City has not established an Office of City Attorney, therefore, CalPERS deems service performed under the agreement between the City and yourself to be professional legal services excluded by G.C. Section 20300(h).

The City enrolled you into CalPERS membership effective September 1, 1993. You are not eligible for Optional Membership, and have never qualified for compulsory membership under G.C. Section 20305, and because you are performing service that is excluded by law, CalPERS has determined that the City enrolled and reported you in error. The City will be instructed to reverse all contributions previously reported on your behalf from September 1993 through September 2002.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several

Richard D. Jones
March 7, 2016
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months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Enclosed is an informational brochure on the General Procedures for Administrative Hearings.

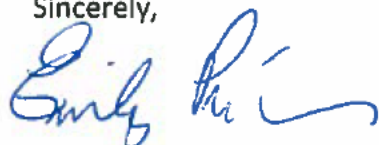
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Your appeal should be mailed to the following address:

RENEE OSTRANDER, Chief
Employer Account Management Division
P.O. Box 942709
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CalPERS remains committed to assisting our members in all matters related to their retirement within the statutory authority available to us. Should you have any further questions regarding this matter please do not hesitate to contact Christina Rollins, Manager of the Membership, Analysis and Design Unit, at (916) 795-2999.

Sincerely,



EMILY PEREZ de FLORES, Manager
Membership Management Section
Employer Account Management Division

Enclosure



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California Public Employees' Retirement System
Employer Account Management Division

March 10, 2016

Richard D. Jones


Dear Mr. Jones;

This letter is an addendum regarding a correction to information in the letter we sent you on March 7, 2016.

On page 3, paragraph 4 of the March 7 letter, it contained a typographical error regarding the date of your last payroll period. The letter stated: "The City will be instructed to reverse all contributions previously reported on your behalf September 1993 through September 2002."

The September 2002 date is incorrect. The City ceased reporting you in September 2015, not 2002, and all contributions through September 2015 must be reversed.

We apologize for any inconvenience this may have caused. CalPERS remains committed to assisting our members in all matters related to their retirement within the statutory authority available to us. Should you have any further questions regarding this matter please do not hesitate to contact Ron Gow, of the Membership, Analysis and Design Unit, at (916) 795-2363.

Sincerely,

A handwritten signature in blue ink that reads "Emily Perez de Flores".

EMILY PEREZ de FLORES, Manager
Membership Management Section
Employer Account Management Division



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California Public Employees' Retirement System
Employer Account Management Division

March 10, 2016

Eddie Manfro, City Manager
City of Westminster
8200 Westminster Blvd.,
Westminster, CA 92683

Dear Mr. Manfro;

This letter is an addendum regarding a correction to information in the letter we sent you on March 7, 2016, regarding Mr. Richard D. Jones.

On page 3, paragraphs 4 and 5 of the March 7 letter, it contained two typographical errors regarding the date of Mr. Jones last payroll period. The letter stated that "the City ceased reporting Mr. Jones to CalPERS as of September 2002," and "the City must reverse all contributions previously reported on his behalf from September 1993 through September 2002."

The September 2002 date is incorrect. The City ceased reporting Mr. Jones in September 2015, not 2002, and all contributions through September 2015 must be reversed.

We apologize for any inconvenience this may have caused. CalPERS remains committed to assisting our members in all matters related to their retirement within the statutory authority available to us. Should you have any further questions regarding this matter, please do not hesitate to contact Ron Gow, of the Membership, Analysis and Design Unit, at (916) 795-2363.

Sincerely,

A handwritten signature in blue ink that reads "Emily Perez de Flores".

EMILY PEREZ de FLORES, Manager
Membership Management Section
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