

SDREA NEWFLASH!
Highlights from the Advocacy Committee
September 13, 2005

SDCERS BOARD CARRIES ON

The SDCERS Board continued under fire from the City Attorney and City Council during the past month, but has emerged with Chairman Peter Preovolos still in office, and one new member added to the SDCERS Board. Both actions occurred at the September 6th City Council meeting, where the resolution to remove Preovolos failed and the appointment of Thomas Hebrank, a CPA, was approved. Three other Board candidates were listed on the Agenda, but all withdrew their names. (A late-breaking update: the appointment of another new SDCERS Board candidate, James Waring, is on the Monday 9/12 Council agenda.)

The attempt to remove Preovolos was primarily because the SDCERS Board had not waived attorney-client privilege, as requested by the City. However on August 30, the SDCERS Board complied with a court order and released documents requested by the U.S. Attorney. The Board also made those documents available to the SEC, the San Diego District Attorney and Kroll, Inc., and this may permit KPMG to complete the FY 2003 audit.

The August 12 SDCERS Board meeting was cancelled for lack of a quorum, and both scheduled Board meetings were consolidated to one day, August 19 (two closed session meetings were also held). Once again the discussion of new IRS rules for retiree DROP withdrawals was postponed.

September Meeting - The SDCERS Board will meet on Friday, September 16, with discussion of investments in the morning and general business in the afternoon. The **new IRS rules for DROP retirees** is scheduled to take place in the afternoon.

KPMG AND THE CONSULTANTS KEEP ROLLING ALONG

An August 9 summit meeting took place between the City Council and its consultants; KPMG, Vincent & Elkins (V&E), and Kroll, Inc. The consultants each gave a progress report; then City Attorney Aguirre gave a lengthy critique of the work products and billing practices of the consultants, particularly V&E, calling both of V&E's reports whitewashes (both reports concluded that there was no intentional wrongdoing). In response, Arthur Levitt, former Chairman of the SEC and current Kroll representative denounced Aguirre's comments as counter-productive.

The results of this meeting were: 1) Vincent & Elkins resigned as defender of the City before the SEC; 2) KPMG was authorized an additional \$ 1,200,000 (total contract, \$3.55 million) to continue the FY 2003 City audit; and 3) Kroll Inc. and its Attorneys (Willkie Farr) each received an additional \$1,200,000 to coordinate the work of V&E and Aguirre and keep the audit process moving along (total Kroll/Willkie contracts, \$6.2 million).

After that meeting, City Attorney Aguirre proposed a settlement agreement with the SEC, wherein the City would acknowledge responsibility for misleading bond investors and agree to remedial actions. Aguirre claims this would expedite the City's return to the bond market and reduce possible fines by cooperating with the SEC.

However the Council disagreed with Aguirre, and recently authorized the City Manager to hire the law firm of Morgan, Lewis & Bockius to replace V&E as defender of the City before the SEC. And this past week, Kroll staff announced that V&E had missed 57,000 documents in its review of City staff emails. City Manager Ewell is withholding \$1 million not-yet-paid to V&E from the \$6.6 million contract for this oversight. We hope that Kroll staff will clarify this and other issues at the scheduled City Council briefing on September 26. Confusing, isn't it?

LAWSUITS - UPDATE

SDCERS v. Aguirre v. SDCERS - The initial suit was filed by SDCERS in January, 2005, to stop the City Attorney from taking over as the SDCERS attorney, and to stop the harassment. A cross complaint was filed by the City Attorney in July, which included as defendants all current SDCERS Board members, five former Board members, SDCERS and City staff. In his complaint, Aguirre asked the court to appoint him as SDCERS legal advisor, to consider appointing a receiver, to roll back MPI and MPIO benefits, and to waive attorney-client privilege.

A lengthy hearing was held on August 23 before Judge Jeffrey Barton. The Judge ruled for and against motions from both sides. SDCERS can keep its own attorneys for the present; however Aguirre may continue to criticize. The City agreed to delete the names of all current board members from the complaint, and will redraft what it had filed.

Judge Barton said that the 'prayer' for receivership could still be considered. He also said that the issues of who is the legal representative for SDCERS and the rollback of pension benefits will go to trial, since these are both policy issues. Both parties have until September 30 to submit revised complaints.

SDCERS v. City of San Diego - This declaratory relief lawsuit asks the court to decide if the benefits SDCERS administers are legal (specifically MPI and MPIO.) A preliminary hearing on this lawsuit is tentatively scheduled for September.

Dumanis v. SDCERS Board Members - At a hearing on August 29, Judge Fredric Link refused to dismiss conflict-of interest charges against the six current and former pension board members accused of conflict of interest in the 2002 underfunding scheme. A preliminary hearing is scheduled for October 26.

The six defendants are suing the City to force the City to pay for their legal fees in cases brought by the City Attorney. The City Council in August declined to indemnify former or current SDCERS Board members,

Two new Lawsuits - On August 15 the City Attorney filed two new lawsuits, both claiming negligence and fraud. One lawsuit is against Gabriel, Roeder Smith and Co., SDCERS actuary for the past 13 years. The second is against Callan Associates, SDCERS investment consultant which is under SEC scrutiny for 'Pay to Play' practices. Former SDCERS Board member Shipione criticized Callan for this practice, but it remains a key SDCERS advisor.

Status of Other Lawsuits: There is no change or new information on other lawsuits listed in previous Newsflash reports (although there have been so many lawsuits, we may have missed a few).

CITY COUNCIL PLAN TO INCREASE PENSION FUND

On Monday, September 12, the City Council will discuss the study and recommendations by a City Working Group to increase the funded ratio of the pension fund to 80% by 2008. Because the Newsflash goes to print before this hearing, we will report on the outcome of the Council discussion and actions at the Tuesday Retiree Association meeting. Judging from the City Manager Report (CMR 05-190), serious thought is being given to pension problems.

ADVOCACY COMMITTEE - LOOKING FORWARD

At last week's Advocacy Committee meeting, we looked to the future and discussed priorities and issues that all members could support, and that were still unresolved, or of continuing concern. The consensus of the committee was that protection of Retiree Health Benefits is the top priority. Although retiree health care has been fully funded by the City for this year, the City's continuing financial problems require us to be vigilant in protecting this benefit.

Other priorities include: supporting realistic plans to increase the pension fund (which the Council is now beginning to address, as noted above), and protecting the 13th check and Corbett settlement.

These priorities do not preclude actions on other-pension related issues as they arise. and we shall carefully follow City Council and Retirement Board actions, as well as court hearings on the many lawsuits.

The Advocacy Committee also discussed the Newsflash! and its effectiveness in informing the membership. We decided to suspend publication of the Newsflash! after this issue for the balance of 2005, and look at other ways we can provide information to a broader segment of our membership. If you have suggestions on what kind of information and in what format is most useful to you, PLEASE CONTACT Virginia Silverman at VirginiaLA35@cox.net. Or visit our website at www.csdrea.com, and post your thoughts in the 'Member Comments' section.

UPCOMING MEETINGS

September 16, 2005 - RETIREMENT BOARD MEETING

Investments - 9:30 a.m., General Business - 1:30 p.m. Agenda available at www.SDCERS.org

Note: Retirement Board meetings are videotaped and usually replayed the same Friday, beginning at 7 p.m., on Cox Cable Ch. 24 or Times Warner, Ch. 24

City Council meetings are broadcast live and replayed the same evening, and on Saturday morning at 7 a.m. (Monday Council) and Sunday morning at 7 a.m. (Tuesday Council). Available only to San Diego City residents.

CITY HALL CONTACTS (Mailing Address for all City officials is: 202 'C' Street, San Diego, CA 92101.
Call City information at 619-236-5555 for phone numbers)

MAYOR - VACANT

CITY ATTORNEY: Mike Aguirre - Email: cityattorney@sandiego.gov

COUNCILMEMBERS:

District 1 Scott Peters - Email: scottpeters@sandiego.gov

District 2 VACANT

District 3 Toni Atkins - Email: ToniAtkins@sandiego.gov

District 4 Anthony Young - Email: anthonyyoung@sandiego.gov

District 5 Brian Maienschein - Email: bmaienschein@sandiego.gov

District 6 Donna Frye - Email: DonnaFrye@sandiego.gov

District 7, Jim Madaffer - Email: jmadaffer@sandiego.gov

District 8, VACANT