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November 5, 2010

**Re: Update on Ordinance Reducing Board of Supervisors Salary and
Presentation of a Resolution Authorizing Voluntary Salary
Reductions by Board Members**

Honorable Supervisors:

Recommendation:

County Counsel recommends that the Board receive a report on the feasibility of adopting an ordinance reducing Board of Supervisors salaries and consider a resolution authorizing voluntary reductions in salary by Board members.

Reasons for Recommendation:

On September 13, 2010, the Board directed staff to prepare an ordinance reducing the Board of Supervisors' salary by 10% and return it to the Board for consideration. Unfortunately, research indicates that an elected officer's salary cannot be reduced during their term, or in any election year after any candidate has filed a declaration of candidacy.¹ Therefore, it is not possible to present an ordinance reducing Board members salaries for immediate implementation.

In *Olson v. Cory* 27 Cal.3d 352 (1980), the California Supreme Court considered the validity of a legislative change to judges' salaries which placed a 5% cap on the cost of living increases. Prior to the change in the law, judges were entitled to cost of living adjustment measured by the Consumer Price Index without limitation. The Supreme Court acknowledged the general rule that public officers don't hold their offices by contract. But, it held that some aspects of holding office, such as compensation, were governed by contract law and the constitutional provision prohibiting impairment of contracts. Since the judges who held office at the time of the change in compensation

¹ California Government Code Section 1235.

entered upon their office for a fixed term upon an expectation of that specific salary, the Supreme Court held that they were entitled to that salary, unchanged, during the balance of their terms.² The California Attorney General reached the same conclusion with regard to the reduction of city council members salaries. (97 Cal.Atty.Gen. 103 (1997)).³ In conformance with these decisions, it is the opinion of the County Counsel's office that the Board may not reduce the salaries of its members during their term. Any change in compensation would have to await new terms for Board members.⁴

However, it is possible for the Board to authorize individual Board members to make *voluntary* reductions in their salaries for specified periods of time. These reductions in salary must be irrevocable and unconditional to meet IRS regulations. Being unconditional means the Board member voluntarily reducing his salary cannot direct the use of the money. The County Counsel cannot give, nor is it qualified to give, personal tax advice. Any Board member seeking to reduce their salary pursuant to this policy should consult their tax advisor regarding tax questions. With that caveat in mind, it appears that a Board member can waive compensation without incurring tax liability on the amount of salary waived. In general, if you elect to reduce your salary, your taxable wages should be reduced accordingly, and thereafter the applicable taxes would be deducted on your remaining income.

We have prepared a resolution authorizing such voluntary salary reductions by Board members for Board consideration.

We would be pleased to answer any questions you might have.

Fiscal Impact:

Unknown.

² Presumably, you would have to look at the salary documents in place at the time of appointment to ascertain the nature of the contract. For example, if the salary resolution in place at the time of appointment specifically stated that salaries could be changed during the term of office, that would govern. However, review of our salary documents relative to elected officers contain no such provision.

³ There are a variety of constitutional provisions and statutes that enter into the discussion. For example, California Constitution Art. III, Section 4, specifically provides that “. . . salaries of elected state officers may not be reduced during their term of office. . . .” Similarly, Government Code section 36516.5 provides that “[a] change in compensation does not apply to a councilman during his term of office; . . .” There are no corresponding sections dealing with county officers. Yet, the cases and Attorney General opinions dealing with this do not rely on the constitutional and statutory provisions. They rely on a general impairment of contract theory which would be equally applicable to county officers.

⁴ The same rationale also applies to other elected officers of the County.

Actions to Be Taken After Board Approval:

The County Auditor would process any voluntary salary reductions received.

Respectfully submitted,



Louis B. Green
County Counsel

LBG/stl

Att.

cc: Chief Administrative Officer
County Auditor
Elected Department Heads

S:\Bd of Supervisors\Agenda Transmittals\Elected Officers Voluntary Reduction of Salary