

# **3% at 50 Court Case**

## **Frequently Asked Questions**

**Q: Why did the Board of Supervisors decide to bring a court case?**

- This case will bring certainty to County peace officers about their future pension rights and their ability to keep the pension money they already have received.
- The County estimates it will save at least \$187 million if the court decides the retroactive pension is invalid.
- The court's decision will result in transparency and accountability in future County decision making.

**Q: It has been reported that the County has sought advice from several law firms about this issue. Why?**

- Given the magnitude of the issue, the Board of Supervisors wanted to get the best legal advice possible before deciding how to proceed.
- As a result of all the advice it received, including legal analyses prepared by attorneys for AOCDS, the Board decided that bringing a court case regarding the constitutionality of the retroactive pension benefits is the best course of action.

**Q: Why didn't the Constitutional legality of the retroactive pension come up at the time it was approved in 2001?**

As best as we can tell, County decision makers did not focus on the issue in 2001, perhaps because they assumed (wrongly) that the issue had been considered and addressed in Sacramento when the statute allowing for "3 percent at 50" benefits was enacted. In any event, after the County became aware of the issue last year it acted promptly but carefully to investigate the issue and resolve it in an orderly manner with the support of the courts.

**Q: How much has the County spent on this matter?**

Through the end of December 2007, the County spent approximately \$485,000. The County is hopeful that, with OCERS and AOCDS's cooperation, this court case can be resolved in an efficient, cost-effective manner.

**Q: How much does the County expect to spend on the court case?**

- That depends. What we know at this point is that all litigation decisions will be made with an eye towards maximizing the benefit to the taxpayers of the dollars spent.
- Whatever amount is ultimately spent, it will certainly be many, many times less than the \$187 million that will be saved by the County if the court case achieves its objectives.
- The potential dollar benefits of litigation are so great compared to projected costs that a private enterprise, finding itself in the County's current position, would likely deem itself duty bound to go to court in order to vindicate the financial interests of its owners.

**Q: Will this cause peace officers to leave for cities and other counties and jeopardize the safety of the public?**

We believe this court action is unlikely to cause peace officers to leave for other jurisdictions. Orange County's peace officers will continue to receive substantial compensation and pension benefits comparable to those provided by cities and other counties. Further, there is no incentive to leave Orange County because peace officers who leave Orange County will not be granted retroactive benefits covering their Orange County service by their new jurisdictions.

**Q: Will the pensions of general County employees be impacted by this?**

- No. The court action will impact only the retroactive compensation awarded by Resolution No. 01-410 to Orange County peace officers. The anticipated litigation will have no affect on pension benefits that were not retroactively awarded, or on retroactive benefits for which employees, through their union MOUs, are reimbursing County costs.
- Also, the County is not seeking the repayment of any monies already paid out by the Orange County Employees Retirement System and received and retained by retired peace officers.

**Q: Counsel for AOCDS has proposed asking a retired California Supreme Court Justice to "review the parties' respective positions and render a non-binding advisory opinion on the merits." Why has the County not agreed to that proposal?**

- AOCDS's proposal is surprising given AOCDS's complaints that the County has already spent too much money investigating the pension issue before coming to a final conclusion.

- In any event, presenting the parties' respective positions to a retired California Supreme Court Justice would be costly and time-consuming and, because the former Justice would render only a non-binding advisory opinion, would merely result in yet another piece of advice for consideration and still more delay in resolving the issue.
- Equally important, submitting the dispute to a retired Justice would provide no certainty for deputies in knowing their pension rights, and no certainty as to deputies' rights to keep money they already have received.
- Finally, the County previously made preliminary inquiries about consulting a retired California Supreme Court Justice, but the Justice was hesitant to become involved in a public fashion and predicted that other retired Justices might have similar hesitation.

**Q: Why has the County not provided AOCDS all of the written analyses prepared by the various law firms it has consulted?**

The County provided AOCDS with a substantial amount of materials at the July 31, 2007 meeting of the Board of Supervisors, including the analysis prepared by Supervisor Moorlach. The County has given AOCDS a more than adequate opportunity to respond. The issues are now framed, and the County, like AOCDS, is entitled to confidential legal advice. Like AOCDS, the County has consulted more than one law firm on this matter.