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STEVEN E. KAYE

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Sent via First Class Mail

Mayor Chuck Reed and City Council Members  
San Jose City Hall  
200 East Santa Clara St.  
San Jose, CA 95113

Re: *Proposed Reduction of Guaranteed Benefits for Current Retirees*

Dear Mayor and City Council Members:

I am writing on behalf of the San Jose Retired Employees Association which represents the interests of retired members of the Federated Employees Retirement Plan of San Jose. It is my understanding that at your next regularly scheduled meeting you are contemplating reducing to 1% the 3% annual Cost of Living Adjustment (COLA) to which those retirees are entitled under Section 3.44.160 of the San Jose Municipal Code. It is my professional opinion that any such action would contravene the Contract Clauses of the United States and California Constitutions because the entitlement to the 3% annual COLA has become a vested property right of those retirees. The City can no more deprive those individuals of that property than it could confiscate an automobile or any other personal property belonging to them.

A very similar situation was addressed in *United Firefighters of Los Angeles v. City of Los Angeles* (1989) 210 Cal.App.3rd 1101. Review was denied by the California Supreme Court and certiorari was denied by the United States Supreme Court. In that case, commencing in 1971, the applicable pension plan provided that annual adjustments based on the Consumer Price Index would no longer be "capped" so that they would fully reflect the rate of inflation each year. In 1982, the electorate passed a Charter Amendment which placed a 3% cap on Cost of Living Adjustments based on the Consumer Price Index. The Court struck down this alteration as an unlawful impairment of vested contractual rights of those employees who performed services prior to its enactment.

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The opinion also addressed the claim of the City that the Charter Amendment placing the cap “was reasonable and necessary” to “preserve the city’s financial soundness by reducing public spending on pension costs” and to “preserve the soundness and integrity of the pension system itself.” (*Id.*, at 1111) The basis for these claims was that, among other things, unexpected and unforeseen increases in the rate of inflation caused pension costs to escalate sharply, thereby, along with other factors, creating “a budgetary crisis in an era of increasingly scarce sources of public revenue.” (*Id.* at 1112) Nonetheless, the Court explained (*Ibid.*) that a desire “to reduce costs or limit public spending does not justify the abrogation or impairment of a public entity’s contractual obligations notwithstanding the legitimacy of such a public purpose” (citations omitted).

Later in the opinion, the Court emphasized that a desire to spend revenues on other things deemed more important never justifies the impairment of a public entity’s contractual obligations (*Id.* at 1114). The Court also noted (at 1115) that “[w]here an enactment appears to be somewhat narrowly tailored to modify a particular contractual obligation, rather than to be part of a broad public program which incidently has the effect of impairing the particular contract, it fails the test [of justifying an impairment].”

Accordingly, I strongly urge that you refrain from taking any action that in any way would impair the earned vested property rights of those retired employees who rendered long and faithful service to the City of San Jose and its citizens.

Sincerely,

SILVER, HADDEN, SILVER, WEXLER & LEVINE

  
STEPHEN H. SILVER

SHS:mrj  
cc. San Jose Retired Employees Association  
06757-ltr