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Judge: City must pay \$5.4 million in legal fees

Pension defendants cite indemnification approved by City Council

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3:28 p.m., Oct. 4, 2012

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Judge: City must pay \$5.4 million in legal fees

A Superior Court judge has ruled that legal fees charged by attorneys for six former pension board members were not unreasonable, and the city must pay at least \$5.4 million.

The ruling Tuesday by Judge William S. Dato does not end the case. A spokesman for City Attorney Jan Goldsmith said that the city will appeal the ruling.

The six officials were accused of violating state conflict-of-interest laws over votes they cast on the city pension board in 2002. The votes ratified a city plan to put less money into the pension system — at the same time the city was increasing retirement benefits for workers.

Prosecutors argued the vote represented a quid pro quo, but in 2010 the state Supreme Court threw out the case against all defendants except Ronald Saathoff, a firefighter's union official. Prosecutors later decided not to press the case against him either.

Now the defendants are seeking to recover legal fees incurred during the unsuccessful prosecution.

The city's appeal of Dato's ruling in the defendants' favor could make the case even more expensive for the city. Dato's ruling approved interest of 7 to 10 percent on portions of the fees, according to Frank Vecchione, the lawyer for former city auditor Terri Webster.

That interest, among other costs, could push the amount the city might owe if it loses the appeal well above \$6 million.

The trial over legal fees was itself somewhat unusual. Most fee disputes are contested through submitting copies of bills and legal declarations, with limited testimony if needed, said Bob Rose, another lawyer involved in the case who defended former pension board member John Torres.

The city rejected that approach and insisted on a trial with testimony, he said. The lawyers had also made an offer to settle the case last year but were stonewalled, Rose said.

"That was rejected, they would not make a counter offer and told us they had no interest in discussing a settlement or mediation," Rose said.

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The fee dispute stems from criminal charges filed in 2005 by District Attorney Bonnie Dumanis. In addition to Webster, Saathoff and Torres, a former fingerprint examiner with the police department, those charged were Cathy Lexin, former human resources director; Mary Vattimo, former treasurer and Sharon Wilkinson, a former city analyst.

At issue in the case before Dato was a resolution passed by the city council in 2002 that indemnified pension board members from any "claim or lawsuit" that arose from the vote. Defense lawyers have argued that the city was obligated to pay under that resolution, but the city said it was intended to cover only civil claims, and not criminal cases.

Dato seemed inclined to agree, and issued a tentative ruling in November siding with the city. In March, Dato changed his mind and issued a ruling saying the resolution meant the city had to pay.

The two-day hearing this week was held to determine if the hourly rates the lawyers charged, and the work they billed for, were reasonable under the law. Dato sided with the defense lawyers on all the issues.



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Robert Herr · Top Commenter · University Of Maryland

Our classic injustice system. Let me see, should I as a bad lawyer in a black robe approve payment to some of my buddies and freinds. Of course I will. The real crimminals here are the bad lawyers in black robes.

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Adam Wagstaff · Top Commenter

They should send the bill to Bonnie Dumanis. She is the one that filed these charges in hope of jumping on Michael Aguirre's misguided bandwagon. I wonder how much taxpayer money has been wasted when you include the legal cost incurred by Dumanis, Aguirre and their staffs?

What Dumanis, Aguirre and the UT apparently failed to realize is that the pension board does not determine the pension benefits. The pension board is responsible for the management of the pension funds and it was the City that sought to increase the pension benefits.

The sad thing is that these baseless criminal charges cost those board members their jobs and possibly their careers.

Reply · 3 · Like · 15 hours ago



Mike Bishop · Top Commenter

While I appreciate your sentiments, the reality is that these were city employees doing city business when they became targeted by -- heaven forbid! -- political gain by the City Attorney, the District Attorney, and the U.S. Attorney here at the time (Lam). That means the city is the appropriate party to pay for their legal expenses.

I do agree with the other assessments you made in your comment.

Reply · 1 · Like · 11 hours ago



Carl Lucy · Southwestern Community College

Carl DeMaio, I thought he said he had no interaction with Doug Manchester. What a Liar. <http://www.kpbs.org/news/2012/oct/04/personal-calendar-reveals-demaio-met-manchester/>

Reply · 1 · Like · 16 hours ago



Adam Wagstaff · Top Commenter

Thanks for the link to the KPBS story about DeMaio's meetings with the UT owner Doug Manchester.

The story has some great insight to how DeMaio thinks. He campaigns for transparency in government and states he has proposals "that will make San Diego the leader in the nation in Sunshine Laws" but he keeps a separate goggle email account and an goggle calendar so he can get around the federal Freedom of Information Act.

DeMaio lied about meeting with Manchester in a recent debate. When caught in the lie, DeMaio tried to weasel his way out of the lie by stating the meeting was campaign related. That point is rather obvious but the the question now becomes what did DeMaio have to promise to Manchester in order to get Manchester's financial backing and the support/endorsement of the UT.

On a side note, it was refreshing to see that at least one organization (KPBS) still does unbiased investigative reporting in this town. Maybe that's why big time republicans such as Mitt Romney want to discontinue funding for public television.

Reply · 3 · Like · 12 hours ago



Mike Aguirre · Top Commenter · Camelback High School

Gail Anderson does not appear to be the person sending this post, and thus it appears to be in violation of UT policy. What the author wrote is not true. The prosecutions in which the fees were incurred were brought by the DA not the City Attorney. What makes the ruling even more distressing is the fact that the DA dropped the case against Ron Saathoff the key defendant after the California Supreme Court and the 4th Appellate Court ruled he could be prosecuted. I am of the opinion this was done by Ms. Dumanis to bolster her personal goal of getting elected Mayor of San Diego.

The law requires the City to have made specific findings that the underlying conduct was not improper which was not done. I support the City Attorney's decision to appeal this ruling. He is finding out how hard it can be to win these cases before the Courts but taxpayers clearly have a case to make before the appellate court. I am sure the trial judge did what he did was right but on this one reasonable minds can disagree.

Gail Anderson whomever that person may be is part of the ugly PR campaign that uses terms like "Manic" "Crazy" and "insanity." Such people hide their identity by pretending to be someone else because they are rightfully ashamed of writing falsehoods and hurling insults.

Reply · 5 · Like · 17 hours ago



Mike Bishop · Top Commenter

That's nonsense, Mike. While the DA may well have jumped on the bandwagon to file criminal charges against these employees, it was you who hitched the team and got the



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