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Office of the City Auditor
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March 5, 2010

Mr. John Russo
City Attorney
City of Oakland
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

RE: Minimum Funding for the Office of the City Auditor to Perform Charter Mandated Duties

Dear City Attorney Russo:

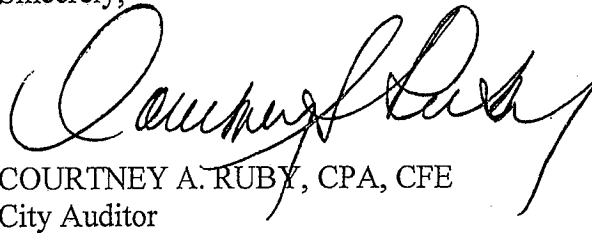
On April 25, 2006, you issued a legal opinion, which concluded that the City Council must provide the Office of the City Auditor minimum funding so that it may perform, without material impairment, its charter mandated duties.

As you are aware, this past Tuesday evening the City Council called for the Office of the City Auditor to sustain an additional 15% cut after a 10% cut earlier this fiscal year. In light of City Council's continued failure to provide adequate funding to fulfill these mandated functions, it is imperative that an objectively determined minimum funding amount for the Office of the City Auditor be clearly established.

Without adequate funding, this Office is materially impaired and prevented from meeting its Charter obligation to protect the public's interest. This failure to fund adequately the City Auditor's Office also makes it impossible for this Office to provide audit services as mandated by special tax and bond measures, which Oakland voter have passed at the ballot box.

It is my hope that your office is able to prioritize this request and establish clear, minimum funding guidelines for the Office of the City Auditor.

Sincerely,



COURTNEY A. RUBY, CPA, CFE
City Auditor

CC: Mayor Ronald V. Dellums
President Jane Brunner
City Administrator Dan Lindheim

Attachments: 1

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Roland Smith, City Auditor
From: Office of the City Attorney
Date: April 25, 2006
RE: City Auditor Budget Cuts

I. Question

Does the Charter require the City Council to provide minimum funding for staff of the City Auditor's Office?

II. Summary Conclusion

The City Council must provide minimum funding so that the City Auditor may perform, without material impairment, his Charter mandated duties.

III. Analysis

Budgetary matters, including fixing of the number of employees, their salaries, and their benefits, are legislative actions. (Scott v. Common Council, 44 Cal.App.4th 684, 690 (1996)) The general rule is that a legislature, a city council for example, has wide discretion over purely legislative actions. (Id.; Hicks v. Board of Supervisors, 69 Cal.App.3d 228, 232; see also Scott v. Common Council, 44 Cal.App.4th 684 (1996); County of Butte v. Superior Court (Brooks) 176 Cal.App.3d 693 (1985).)

However this general rule yields to the exception that the budget cuts may not prevent the performance of a city official's duties as enumerated by a city charter. (Scott v. Common Council, supra, at 695.) The Scott court recognized that in "rare" cases judicial interference with the legislative process is justified. A city council cannot violate its own charter. The City Council, by a budgetary act, could not ignore a charter officer's charter mandated duties.

It is well settled that a charter city may not act in conflict with its charter. Any act that is violative of or not in compliance with the charter is void. The city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter (Id., internal quotations and citations omitted, emphasis added.)

In Scott, the trial court found that elimination of all of the city attorney's investigators "materially impaired" the city attorney in the performance of his charter mandated prosecutorial duties. The investigators were "absolutely necessary" for the performance of the city attorney's city charter functions. The work of the investigators was "inseparable" from the city attorney's prosecutorial function. The San Bernardino council's budgetary actions rendered the city attorney "unable to perform his statutory functions" and "eliminate[d] [the city attorney's] ability to carry out the sworn statutory and charter requirements and duty mandated by the people of this city and the State of California." (Id. at 694-695.)

The appellate court upheld the trial court and held that the city could only eliminate charter mandated duties after it had eliminated non-charter mandated programs first. (Id. at 698, fn. 11.)

Can the City Council Cut Positions in the City Auditor's Office?

Under the guidelines of Scott and Hicks, the Oakland City Council's funding of positions in the City Auditor's Office depends on a factual question: Will the reduction of positions in the City Auditor's office "prevent" or "materially impair" the City Auditor from performing his Charter mandated duties?

The City Auditor's Charter Mandated Duties

Under the Oakland City Charter, the City Auditor has wide ranging mandatory duties to review the City's financial documents:

The City Auditor shall have the power and it shall be his or her duty to *audit the books, accounts, money and securities of all departments and agencies of the City* and such other matters as the Council may request;

[T]o report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or

procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. . . .

The City Auditor *shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor.* (Charter, section 403, emphasis added.)

The Charter goes on to define that the "public interest" "shall include, but not be limited to":

(1) *Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.*

(2) *Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.*

(3) *Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.*

(4) *Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.*

(5) *Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.*

(6) *Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures.* These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. *The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.*

(7) *Responding to requests for audit and reviews.*

(8) *Submitting, at a public meeting of the full City Council, a quarterly report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.*

(9) *The City Auditor shall conduct performance audits of each department as specified in the City budget. (Id.)*

Charter Section 403 includes "responding to requests for audit and review" as "in the public interest." The Charter also requires that the City Auditor perform audits "as required by the Council." Several ballot measures authored and placed on the ballot by City Council direct the City Auditor to perform an annual audit of disbursements authorized by the measures. Those measures include Measure M (Special Tax to Fund Emergency Medical Services); Measure N (Special Tax to Fund Paramedic Services); Measures O (Library Service Retention Act of 1994) and Measure Q (Library Services Retention and Enhancement Act).

So long as the City Council funds any non-Charter mandated expenditures, the City Council must provide minimum funding so that the City Auditor may perform, without material impairment, his Charter mandated duties.

Very truly yours,

John Russo
City Attorney

Attorney assigned: M. Morodomi

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