

BOBBITT PINCKARD & FIELDS

A Professional Corporation
8388 Vickers Street
San Diego, California 92111-2109

EVERETT L. BOBBITT (1946-2007)
RICHARD L. PINCKARD
BRADLEY M. FIELDS
JULIE STEELE BUECHLER

OF COUNSEL
ROBERT W. KRAUSE

ANNETTE BURSTEIN
LEGAL ADMINISTRATOR

Telephone
(858) 467-1199
Facsimile
(858) 467-1285
www.coplaw.org

November 19, 2008

Garry A. Sobeck, Chairman of the Board
San Diego County Employees Retirement Association
2275 Rio Bonito Way, Suite 200
San Diego, CA 92108-1685

Re: San Diego District Attorney Investigators Association

Dear Mr. Sobeck:

This office represents the San Diego District Attorney Investigators Association ("SDDAIA") in labor and employment matters. On behalf of the SDDAIA, we hereby request that you reconsider your position that SDDAIA members do not qualify for the Internal Revenue Code ("IRC") section 415(b)(2)(H) police exception for maximum benefits paid to a member of a defined benefit plan.

IRC section 415 provides that the maximum benefit that can be paid to a member of a defined benefit plan is \$160,000 per year at age 62. For retirement ages less than 62, the \$160,000 benefit figure is reduced. (IRC section 415 (b)(2)(C).) However, there is an exemption for a "full-time employee of any police department or fire department which is organized and operated by the State . . . or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State . . . or any political subdivision . . ." (IRC section 415 (b)(2)(H).) For those covered by this exemption, the \$160,000 limit at age 62 does not apply. (IRC section 415 (b)(2)(G).)

Notes provided to me suggest that, in 2003, your Board considered whether the IRC section 415(b)(2)(H) police exemption applied to SDDAIA members. At that time, your Board determined that the police exemption did not apply to SDDAIA members. We ask you to reconsider your position. Simply stated, the County of San Diego, a political subdivision of the State of California, maintains provides police protection by and through its SDDAIA members.

Perhaps the best example of how SDDAIA members provide police protection is to compare them to other local law enforcement agencies. Simply stated, SDDAIA

Garry A. Sobeck, Chairman of the Board
November 19, 2008
Page 2

members have very much in common with other local police officers and deputy sheriffs.

One example of the similarity between SDDAIA members and other local law enforcement agencies is that they are sworn peace officers under California Penal Code section 830.1, which is the same code section that covers other local police officers and deputy sheriffs.

In fact, because of the Penal Code section 830.1 designation, members of the SDDAIA receive the same initial and ongoing training as police officers and deputy sheriffs. As required by the California Commission on Peace Officer Standards and Training ("POST") for all POST certified police agencies, members of the SDDAIA are required to meet all state and federal mandated training associated with Penal Code section 830.1 officers, which include training in firearms, arrest and control, first aid, tactical communication, emergency vehicle driving and force options. Additionally, because of the investigative nature of their jobs, SDDAIA members are required by POST to attend an additional 80 hour investigation and trial preparation course above and beyond the normal training for peace officers. Importantly, the SDDAIA members complete the same National Incident Management System sequence of training as all other police officers and deputy sheriffs in the state and throughout the country as responders to critical incidents.

Additionally, SDDAIA members are equipped with much of the same gear as other local law enforcement officers. Specifically, they are armed with firearms, pepper spray, batons, shotguns, and long guns. And, much like other police officers and deputy sheriffs, their equipment displays POLICE on the ballistic vests, hats, jackets, vehicles, etc. and their vehicles are classified as emergency vehicles by the state of California, with first responder equipment such as lights and sirens.

Further and perhaps most importantly to the analysis, the members of the SDDAIA are responders to critical incidents and perform much the same police protective services as other police officers and deputy sheriffs. For example, SDDAIA members have responded to two fires as first responders and were responsible for protection of life and property, working side by side with police officers and deputy sheriffs in every capacity. Additionally, SDDAIA members have also been placed on standby for other potential police incidents, such as the San Diego Biotechnology conference. Finally, SDDAIA members participate in regional task force operations with police officers and deputy sheriffs, while performing the same functions. In fact, much like other local law enforcement agencies, SDDAIA members conduct street level investigations and conduct extraditions. While SDDAIA members do not respond to

Garry A. Sobeck, Chairman of the Board
November 19, 2008
Page 3

radio calls, their responsibilities of arrest, search warrant, surveillance, and undercover operations mirror that of a detective working in any local law enforcement agency. In fact, SDDAIA members may have more tasks related to the safety of the public than that of police officers or deputy sheriffs, which include witness protection and relocation, dignitary security, and investigations concerning peace officer shootings.

Again, on behalf of the SDDAIA, we hereby request that you reconsider your position that SDDAIA members do not qualify for the Internal Revenue Code ("IRC") section 415(b)(2)(H) police exception for maximum benefits paid to a member of a defined benefit plan. I look forward to hearing from you regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley M. Fields', with a stylized, sweeping flourish at the end.

Bradley M. Fields

/ceb

cc: Alex Garcia, SDDAIA President