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From: Gabriella Yap [mailto:Gyap@lhhcity.org]

Sent: Wednesday, May 08, 2013 11:43 AM

To: Gow, Ronald

Subject: City of La Habra Heights - question

Hi Ron,

My City Manager asked me to relay the following situation. Basically, a Council member would like her to hire a contract city clerk named [REDACTED]. When the City Manager told this Council Member that we would have a PERS conflict because Ms. [REDACTED] was a former City Clerk in a PERS City, the Council Member consulted Dick Jones, a municipal attorney who advises many cities in the area (see email below). Mr. Jones and our city attorney are of the opinion that we can hire Ms. [REDACTED] even though she is a former city clerk.

For clarification for all of us, can you please send something in writing to us explaining:

- 1) If Ms. [REDACTED] could be hired as a consultant, or if she would need to be an employee?
- 2) If we would need to pay into PERS for Ms. [REDACTED]? And when Ms. [REDACTED] does retire from PERS, that the City would still be on the hook? The attorneys seem to be focusing on the IRS guidelines and not so much on the PERS issue.
- 3) Also, newer employees in our City pay their portion of PERS. Even if Ms. [REDACTED] were a consultant, would she be responsible for paying into it if she worked here?

This would be greatly appreciated.

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-----Original Message-----

From: Jane Williams [mailto:[REDACTED]]

Sent: Tuesday, April 30, 2013 4:28 PM

To: Shauna Clark

Subject: FYI

Shauna:

In a discussion with Dick Jones about how other cities manage to hire contractors and we can't because of Stephen, he made the following points/statements:

You have to be much more careful today. You need a specific contract describing the task for which corporation is being hired, the tasks the individual or individuals will be expected to perform, no office and the corporation must have other clients.

If there are other employees working on the task the contractor provides the supervision and the city provides no direct supervision.

Basically it has to meet the IRS listed 10 points which is how my husband has worked for th past 25 years.

I think the specific contract with specific task, and other clients (for Steve it has always been during the same year). so in the area of City Clerk the contract might also include not to exceed 640 hours or something like that.

La Habra's Emergency Services Manager is a retired police captain who had to go through all these steps to continue doing what he had been doing half time for three year before.

Jane

-----Original Message-----

From: Gow, Ronald [mailto:Ronald_Gow@CalPERS.CA.GOV]

Sent: Thursday, May 16, 2013 3:50 PM

To: Gabriella Yap

Subject: RE: City of La Habra Heights - question

Hi Gabriella,

I have reviewed the duty statement, and because the deputy city clerk performs assigned City functions, attends City Council meetings, maintains custody of City Council records and other legal requirements of the City Clerk's office, we would consider this classification to be an employee, not a contractor. So the answers to your questions break down to:

- 1) Yes, she would be an employee. The duties of the City Clerk or Deputy City Clerk cannot be functionally separated from the City, and therefore cannot be considered independent.
- 2) Yes, she would need to be reported to CalPERS, and she would be entitled to a benefit based on her service with the City. The extent to which the City would "be on the hook" would be determined by the amount of service earned under the City, and the compensation reported.
- 3) Employer Paid Member Contributions are defined by Government Code 20691, and California Code of Regulation section 569 permits an exception to that for new hires for up to five years. This requires a resolution be filed with CalPERS. I have referred this question to our compensation review unit to research what resolutions you have on file, and how this may be implemented.

Hope this helps!

Ronald Gow, RPS II

Membership, Analysis and Design Unit