Orange County Issues Overview Resolution No. 01-410

prepared for the

Board of Supervisors of Orange County

January 29, 2008

**KIRKLAND & ELLIS LLP** 

Board Supervisors have an obligation to uphold the California Constitution

#### **OATH OF OFFICE:**

I "do solemnly swear (or affirm) that I will support and defend the ... the Constitution of the State of California ... ; that I will bear true faith and allegiance to the ... Constitution of the State of California; ... and that I will well and faithfully discharge the duties upon which I am about to enter."

California Constitution, Article 20, § 3

## What is a Constitution?

#### Law designed to protect our freedoms

#### Provides rules of the road for good lawmaking

## Two principles of democratic government:

#### 1. Transparency

### 2. Accountability

## **Transparency:**

Citizens' ability to see and understand what government officials are doing

### **Accountability:**

Citizens' ability to reward or punish government officials based on their performance in office

## Transparency

## enhances

## Accountability

# Two California Constitutional provisions in play:

#### Debt-limit provision

#### Extra-compensation provision

### **Debt-limit provision:**

"No County ... shall incur any indebtedness or liability in any manner or for any purposes exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the votes of the public entity voting at an election to be held for that purpose"

California Constitution, Art. XVI, § 18

## Extra-compensation provision:

A "local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered and performed in whole or in part"

California Constitution, Art. XI, § 10

Both provisions work to enhance Transparency and Accountability

## **The Debt-Limit Provision**

## **Debt-limit provision:**

- Ensures the actual cost of government in any given year is closely related to tax revenue for that same year
- Gives "the people" the ultimate power to approve/reject projects requiring long-term funding from future-year taxes

### **Permissible options:**

1. Enter long-term obligation as required by a higher unit of government

2. Enter long-term obligation in return for future stream of future-year services (prospective only)

### **Permissible options:**

3. Identify previously unappropriated revenues in year 1 for all future years (special fund)

4. Obtain approval by a 2/3 supermajority of citizens (voter approval)

## 2001 Board of Supervisors chose none of these options

**Decision made in 2001** funded with tax revenues from: FY 2002 FY 2003 FY 2004 FY 2005 FY 2006 FY 2007 ...

Board Member	December 4, 2001
Janet Nguyen	No
John M.W. Moorlach	No
Bill Campbell	No
Chris Norby	No
Patricia C. Bates	No

## What does AOCDS say?

The debt-limit provision "only applies to current items of indebtedness recognized during the fiscal year" AOCDS response is no answer — it underscores the problem

## The Extra-Compensation Provision

## Extra-compensation provision:

- Prohibits retroactive increases in benefits to <u>current</u> employees for <u>past</u> services
- Protects against greater risk that <u>current</u> employees will bring pressures to bear on local government to provide retroactive unearned benefits

AOCDS says there is no court decision directly addressing this issue Pension benefits are obviously a form of compensation

### **Pension = Compensation**

Employee, 20 years of service, \$100,000 annual compensation, retires at 50: July 27 retirement (2%@50): \$40,000 July 28 retirement (3%@50): \$60,000 The increased pension is increased compensation awarded for <u>past years</u> of service

## What does AOCDS say?

#### Extra-compensation provision does not apply to pensions

- No exception for pensions in text of California Constitution
- Increasing pension benefits is worse than cash giveaway from transparency and accountability perspective

## AOCDS response is no answer it underscores the problem

## What would the County seek in a court case?

- Declare and clarify what law requires
- Obtain ability for deputies to keep money already received
- Obtain order requiring OCERS to comply going forward
- Procedures to ensure recalculation is accurate

Retirees will receive the pension they thought they would receive in each year the services were performed

## What would a successful case achieve?

- Certainty for deputies to know their pension rights
- County estimated to save at least \$187 million if litigation is successful
- Transparency and accountability in future County decisionmaking
- Certainty for deputies to keep money they already received



- Approximately \$485,000 spent in 2007
- Publicly discussed cost estimates of more than \$1 million and even higher amounts not unreasonable
- Even in a worse case cost scenario, bringing a court case can be justified from a dollars and cents perspective
- County estimated to save at least \$187 million if court case is successful

## Conclusion