



RENNE SLOAN HOLTZMAN SAKAI LLP

350 Sansome Street, Suite 300  
San Francisco, CA 94104-1304  
t: 415.678.3800  
f: 415.678.3838

July 20, 2010

JONATHAN HOLTZMAN  
(415) 678-3807  
[jholtzman@rshslaw.com](mailto:jholtzman@rshslaw.com)

**VIA OVERNIGHT MAIL**

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

**Re: *Retired Employees Association of Orange County v. County of Orange*  
Supreme Court Case No. S184059**

To the Honorable Justices of the Supreme Court of California:

I write on behalf of *Amici Curiae*, the League of California Cities<sup>1</sup> and California State Association of Counties<sup>2</sup> (collectively, “*Amici*”), in support of Defendant and Appellee County of Orange’s request, pursuant to Rule of Court 8.548(e)(1), that the Court grant a hearing in this matter, and to suggest the Court consider reframing the question to more closely mirror the facts of the particular case before the Ninth Circuit.<sup>3</sup>

There is no doubt that the issue of whether and under what circumstances retiree health benefits can become vested is of enormous importance to California cities and counties. Based upon recent changes in public accounting rules (GASB 43 and 45), it is clear that already fiscally distressed cities and counties could be faced with billions of dollars in additional liabilities if they are not able to make the kinds of adjustments made by Orange County. However, in the

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<sup>1</sup> The League of California Cities (“League”) is a non-profit association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy committee, which is comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide—or nationwide—significance. The Committee has identified this case as being of great significance due to its potential impact on many California cities.

<sup>2</sup> The California State Association of Counties (“CSAC”) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter with the potential to affect all California counties.

<sup>3</sup> The League and CSAC previously filed an *amicus* brief in the Ninth Circuit in support of Orange County.



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*Amici's* view, the question posed by this case is less whether such obligations can *ever* be “implied,” but rather, whether they can be implied in the absence of clear, formal *legislative* approval. In the absence of legislative action, cities and counties could be saddled with huge liabilities that were never intended, never properly evaluated and costed, and as to which the public was never given an opportunity to comment or judge its elected officials. Implying a contract in such circumstances would undercut long established principles of public accountability that require major financial commitments, especially in the area of employee compensation, be approved by the governing body. (See 10 McQuillin, *Mun. Corp.* § 29.2 (3d Ed. 2009) [the provisions of law circumscribing a government agency’s contractual powers “exist to protect the citizens and taxpayers....”].)

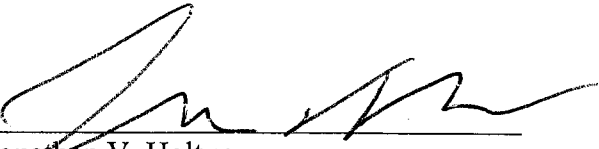
For the above reasons, *Amici* support the restated question proposed in the County’s July 19, 2010 letter. In particular, we believe it is essential that the court’s consideration focus on whether, absent a *clear intention* to do so evidenced by a *legislative act*, a California county and its employees can form an implied contract that confers lifetime vested rights to the manner in which retirees’ medical premiums are determined.

While the California Supreme Court has never addressed this question in the context of medical benefits, we believe the Court should be guided in its resolution of this issue by longstanding case law holding that (1) public employment is by statute, not by contract (*Miller v. California* (1977) 18 Cal. 3d 808, 813); (2) only the governing body may bind a public agency with respect to the compensation of its employees (Cal. Const., art XI, section 1(b); *County of Riverside v. Superior Court* (2003) 30 Cal. 4th 278, 285); (3) and public contracts must be executed through prescribed methods (*Miller v. McKinnon* (1942) 20 Cal.2d 83, 87-88). The Court should be further guided by the express language of the ’37 Act, which expressly provides that such benefits, *even when expressly granted by ordinance*, are not vested. (Gov. Code § 31692.)

Date: July 20, 2010

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By   
Jonathan V. Holtzman

Attorney for *Amici Curiae*  
League of California Cities and  
California State Association of Counties



**CERTIFICATE OF SERVICE**

I declare that I am employed or reside in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within entitled cause; my address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 20, 2010, I served the **JULY 20<sup>TH</sup> LETTER ON BEHALF OF AMICI CURIAE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO THE SUPREME COURT IN SUPPORT OF ACCEPTANCE OF CERTIFICATION** on the parties below by placing the document(s) listed above in a sealed envelope(s) addressed as set forth below, and consigning same on this date to an express mail service for guaranteed delivery on the next business day following the date of consignment.

For Defendant-Appellee County of Orange:

Arthur Anthony Hartinger  
Jennifer L. Nock  
MEYERS NAVE RIBACK SILVER  
& WILSON  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

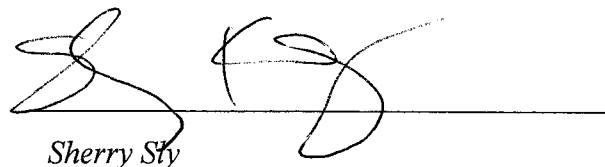
Attorneys for Plaintiff-Appellant Retired County Employees Association, et al.

Scott Emblidge  
Michael Patrick Brown  
Rachel Sater  
MOSCONE EMBLIDGE & QUADRA,  
LLP  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94109

Attorney for Amicus Curiae California Retired County Employees Association, et al.

Robert Bezemek  
Law Offices of Robert Bezemek  
1611 Telegraph Avenue  
Suite 938  
Oakland, CA 94612-2140

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 20, 2010 at San Francisco, California.

  
Sherry Sty