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MEMORANDUM

DATE: December 22, 2016

TO: Board of Retirement

CC: James Wilbanks, Ph.D., Retirement Administrator

FROM: Jeff Berk
Legal Counsel

RE: GASB 68 Costs

At the December Board meeting, I was asked if the costs incurred for work done by Segal related to the implementation of GASB 68 could be charged to MCERA, or if instead they should be paid for by the county. As discussed below, based on my review of the CERL, and discussions with Andy Yeung of Segal and my counterparts in other systems, I think that the better answer is that they should be paid for by the county.

Government Code section 31588.2 states that “no funds in the retirement fund shall be expended for any purpose other than the expense of administration of the system.” (That section allows for funds to be spent for two other purposes, neither of which are relevant here.) Given that language, the question is whether GASB 68 costs are for administration of the system. While there are no court decisions interpreting this language, it would appear that to be properly viewed as such, an expense would need to have a primary purpose of benefiting the fund and its members and relate to administration of the system itself, rather than the administration of another entity. Otherwise, the expense is simply not within section 31588.2.

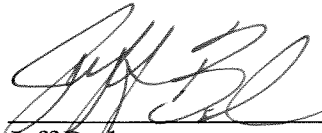
GASB 68 imposes financial reporting requirements not on the fund, but on the public employers who participate in the system. If those employers could meet those obligations without the help of the fund’s actuary, nobody would contend that those costs were expenses of fund administration. That the fund’s actuary must, as a practical matter, provide services to the sponsor to help it achieve its compliance does not, in my view, transform this cost into an expense of administration of MCERA. This was essentially confirmed in my conversation with Andy, in which he said that the reasons for incurring these costs are 99% due to employer reporting requirements under GASB.

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This is not to say that some couldn't make an argument to try to justify MCERA paying for these costs. In fact, Andy shared that there are some systems that do. However, given the above, I think the better conclusion is that these costs be paid for by the county.

Please let me know if you have any questions.

A handwritten signature in black ink, appearing to read 'Jeff Berk', written over a horizontal line.

Jeff Berk
Legal Counsel

JLB:ao