

CITY OF OAKLAND
Office of the City Attorney
Legal Opinion

TO: **PRESIDENT JANE BRUNNER AND
HONORABLE CITY COUNCIL**

CC: Mayor Ronald V. Dellums; City Administrator Dan Lindheim;
Budget Director, Cheryl Taylor

FROM: City Attorney John Russo

DATE: May 27, 2010

SUBJECT: Minimum Budget Requirements for City Auditor's Office Under the Oakland
City Charter

I. INTRODUCTION

On April 25, 2006, the City Attorney's Office issued a formal legal opinion on whether the City Council must provide the City Auditor minimum funding. Budgetary matters, including fixing of the number of employees, their salaries, and their benefits, are legislative actions. The general rule is that a legislature, a city council for example, has wide discretion over purely legislative actions. However in "rare" cases judicial interference with the legislative process is justified. A city council cannot violate its own charter. "The city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter" (Scott v. Common Council, 44 Cal.App.4th 684, 690 (1996).) The Legal Opinion is attached.

On March 5, 2010, the City Auditor asked the City Attorney's Office for a formal legal opinion on at what budgetary level is the City Auditor's Office prevented from carrying out its Charter-mandated duties.

Because the City Auditor's request required an expert analysis of the level of auditing services necessary for the City Auditor to perform her Charter-mandated duties, we engaged the firm MGT of America ("MGT"), based in Sacramento. MGT is a national management consulting and performance audit firm specializing in providing services to public-sector and non-profit clients. MGT has provided services to the City's Finance and Management Agency in 2007, 2008, and 2009, and is currently providing services to the Agency. In addition, MGT has performed audits and reviews of governmental entities across the country, including the North Carolina General

Assembly and the City of San Jose. The staff that performed the expert services for the City Auditor's report were not the same staff who have or are providing services to the Finance and Management Agency.

II. QUESTION

Would a cut of 15 percent from the City Auditor's budget in fiscal year 2010-11 impair the City Auditor from carrying out activities mandated under the City Charter?

III. CONCLUSION

According to MGT's report, the current budget for auditor positions in the City Auditor's Office is already below the amount necessary to carry out the minimum duties required by the City Charter. As stated in the MGT report, the analysis considered current auditing benchmarking and best practices, census population estimates to ascertain similarly sized cities, and cities with elected auditors with analogous charter mandates. Because the MGT analysis is a "snapshot" of a specific moment in the City's organizational history, the City Attorney's Office does not reach the issue of whether the previously adopted City Auditor budget violates the Charter nor does the City Attorney's Office opine that the number of positions suggested by the MGT report is an absolute, constant minimum.

As of this date, however, and based on MGT's analysis, the City Attorney's Office does conclude that any cuts in existing auditor positions would be in violation of the City Charter because further cuts would certainly prevent the City Auditor from carrying out her Charter mandated duties.

Very truly yours,



JOHN A. RUSSO

City Attorney

Attorney Assigned:

Mark T. Morodomi