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 …
<table>
<thead>
<tr>
<th>Board Member</th>
<th>December 4, 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janet Nguyen</td>
<td>No</td>
</tr>
<tr>
<td>John M.W. Moorlach</td>
<td>No</td>
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<tr>
<td>Bill Campbell</td>
<td>No</td>
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<tr>
<td>Chris Norby</td>
<td>No</td>
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<tr>
<td>Patricia C. Bates</td>
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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 current employees for past services

• Protects against greater risk that current 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 past years 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
Cost
• 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