DEPARTMENT OF PERSONNEL ADMINISTRATION ARNOLD SCHWARZENEGGER, *Governor*

MEMORANDUM

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SUBJECT: ***Impact of Proposition 1(f) on the California Citizens Compensation Commission's Authority to Adjust the Benefits and Salaries of State Officers***

ISSUE

I. **What is the impact of Proposition 1(f) on the authority of the California Citizens Compensation Commission ("Commission") to adjust the salaries and benefits of state officers?**

BRIEF ANSWER

I. Proposition 1(f) limits the Commission's power to increase salaries during a budget deficit.[1] While the Commission is not specifically precluded from increasing benefits during a budget deficit, it must consider the deficit before increasing benefits. The Commission retains the authority to decrease salaries and benefits should a budget deficit arise.

INTRODUCTION

The Commission was created in 1990 by Proposition 112. The Commission is empowered by the California Constitution to alter the salaries and benefits of state officers. The Commission derives the entirety of its authority from Section 8 of Article III of the California Constitution (hereinafter "Section 8").

[1] A "budget deficit" as used in this legal opinion, exists when the Director of Finance certifies to the commission, on or before the immediately preceding June 1 that there will be a negative balance on June 30 of the current fiscal year in the Special fund for Economic Uncertainties in an amount equal to, or greater than, 1 percent of the estimated General Fund revenues.

ANALYSIS

A. Summary of Changes Made by Proposition 1(f)

Proposition 1(f) amended Section 8 in two ways. First, it added a provision, under subdivision (g), restricting the Commission's power to authorize salary increases during a budget deficit. Subdivision (g) now reads in relevant part:

> [A] resolution shall not be adopted or take effect in any year that increases the annual salary of any state officer if, on or before the immediately preceding June 1, the Director of Finance certifies to the commission based, on estimates for the current fiscal year, that there will be [a budget deficit]. (Attachment A).

Next, Proposition 1(f) added the existence of a budget deficit to the factors, under subdivision (h), that the Commission may consider in determining whether to adjust salaries and benefits. Subdivision (h) now reads in relevant part:

> In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following: . . . . (4) Whether the Director of Finance estimates that there will be [a budget deficit] in the current fiscal year. (Attachment A).

Finally, Proposition 1(f) bifurcated the resolution procedure by which the Commission adjusts salaries and benefits under subdivision (g). Under subdivision (g), the Commission is now able to pass a separate resolutions to adjust the salaries and benefits of state officers.

The effects of these changes are described below.

B. Proposition 1(f) Limits the Commission's Authority to Increase Salaries During a Budget Deficit

Proposition 1(f) added plain language to Section 8, subdivision (g) that restricts the Commission's authority to increase salaries during a budget deficit. This restriction, however, is only triggered if, on or before June 1, the Director of Finance certifies that there will be a negative balance on June 30 of the current fiscal year in the Special Fund for Economic Uncertainties in an amount equal to or greater than 1 percent of the estimated General Fund revenues. (Cal. Const. Art III, § 8, subd. (g)). If the Director of Finance fails to certify that these economic conditions exist before the immediately preceding June 1st, the Commission is not prohibited from increasing salaries.

The added language in subdivision (h) of Section 8 compliments the restrictive language in subdivision (h) by requiring the Commission to include in its consideration for salary and benefit adjustments whether the Director of Finance predicted a budget deficit in the current fiscal year.

C. Proposition 1(f) Does Not Completely Eliminate the Commission's Authority to Increase Benefits During a Budget Deficit

Proposition 1(f) bifurcated the resolution procedure by which the Commission adjusts salaries and benefits. Under Section 8, subdivision (g), the Commission is now able to pass separate resolutions to adjust the salaries and benefits of state officers. Proposition 1(f) did not add the same language prohibiting an increase in benefits in deficit years as it did regarding an increase in salaries. This means the Commission is not precluded from granting a benefit increase. However, the proposition did add the language in subdivision (h) that requires the Commission to consider a budget deficit when making an annual benefit adjustment. Therefore, the Commission must consider a certified budget deficit, but can still recommend a benefit increase.

D. Proposition 1(f) Preserves the Commission's Authority to Decrease Both Salaries and Benefits During a Budget Deficit

The plain language of Section 8 contains no express limitation which would prevent the Commission from decreasing state officer salaries during a budget deficit. Section 8 now reads:

> (h) In establishing or ***adjusting*** the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following: . . . . (4) Whether the Director of Finance estimates that there will be a [budget deficit] in the current fiscal year. (Attachment A, emphasis added).

The term "adjust" refers to either an increase or decrease in salaries and benefits. Although increases are specifically precluded in subdivision (g), decreases are not. Thus, the Commission may still decrease salaries and benefits during a certified budget deficit.

However, the Commission may only consider the fiscal situation of the State, if the Director of Finance certifies the appropriate economic conditions exist. The language added to subdivision (h) is very specific in terms of what the Commission may consider, and specifically refers to the estimates by the Director of Finance. Where the Director of Finance has not made any estimates concerning the budget, the Commission may not base its decision to decrease salaries and benefits on the fiscal situation of the State.

In addition, the Commission's authority to decrease salaries during an elected official's term is still prohibited by Section 4 of Article III of the California Constitution. Section 4 reads in relevant part:

> Except as provided in subdivision (b), salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

Proposition 1(f) did not eliminate or amend this restriction.

<u>CONCLUSION</u>

Proposition 1(f) limits the Commission's power to increase salaries during a budget deficit. While the Commission is not specifically precluded from increasing benefits during a budget deficit, it must still consider the deficit before increasing benefits. The Commission retains the authority to decrease both salaries and benefits should a budget deficit arise.