

ATTACHMENT C

WRITTEN COMMENTS

From: [Shipley, John](#)
To: [Avina, Laura](#)
Cc: [Shipley, John](#)
Subject: Fwd: Dudley J. Lang comments.
Date: Sunday, March 29, 2020 3:19:18 PM

Sent from my iPhone

Begin forwarded message:

From: Kenneth Herrscher [REDACTED]
Date: March 28, 2020 at 9:23:35 AM PDT
To: "Shipley, John" <John.Shipley@calpers.ca.gov>
Subject: Dudley J. Lang comments.

[External Email Caution]

Dudley J. Lang obviously knew the Calpers Rules and violated them. He should be held accountable. If not, you open the door to other cheaters.

Warm Regards,

Kenneth W. Herrscher
Sr. Systems Engineer
Southern California Regional Rail Authority.

From: [Shipley, John](#)
To: [Avina, Laura](#)
Subject: FW: California Special Districts Association Response to Request for Public Comments re Designation of Board Decision in the Dudley J. Lang Matter as Precedential
Date: Wednesday, May 27, 2020 11:59:21 AM
Attachments: [CalPERS Letter - LANG 5.15.20.pdf](#)

From: Dillon Gibbons [REDACTED]
Sent: Friday, May 15, 2020 4:23 PM
To: Shipley, John <John.Shipley@calpers.ca.gov>
Cc: Frost, Marcie <Marcie.Frost@calpers.ca.gov>; Pacheco, Brad <Brad.Pacheco@calpers.ca.gov>; Jones, Henry <Henry.Jones@calpers.ca.gov>
Subject: California Special Districts Association Response to Request for Public Comments re Designation of Board Decision in the Dudley J. Lang Matter as Precedential

[External Email Caution]

Mr. Shipley,

Attached are the California Special Districts Association's comments on Dudley J. Lang matter as precedential. Please note in my comments that we don't think this is an appropriate time to be taking this action and that the comment period should be extended until after the current public health crisis in California has subsided. Our districts that would normally be reviewing and commenting on a matter of this magnitude are currently focused on keeping the power on, water running, hospitals open, and responding to emergencies to keep this state running, and they're doing so with reduced financial resources and staff.

Dillon Gibbons
Senior Legislative Representative
California Special Districts Association

p: [REDACTED]

c: [REDACTED]

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**California Special
Districts Association**

Districts Stronger Together

May 15, 2020

Sent via Email to – john.shipley@calpers.ca.gov

CalPERS Legal Office
Attn: John Shipley, Senior Attorney
400 Q Street, Rm LPN 3340
Sacramento, CA 95811

Re: California Special Districts Association Response to Request for Public Comments re Designation of Board Decision in the Dudley J. Lang Matter as Precedential

Dear Mr. Shipley:

On behalf of the California Special Districts Association (CSDA), I'm writing to express opposition to the adoption of the Decision "In the Matter of the Appeal Regarding Post Retirement Employment of DUDLEY J. LANG" as precedential. CSDA is California non-profit corporation consisting of over 900 special district members, most of which are California Public Employees' Retirement System (CalPERS) member agencies, that provide a wide variety of public services to urban, suburban and rural communities throughout California.

CSDA is disappointed with the CalPERS Board's decision to not indefinitely extend the time period for comment until such time the State of Emergency in California due to the COVID-19 pandemic has ended.¹ The CalPERS request for comment on this Matter was issued on February 26, mere days before the State of Emergency was declared and local governments throughout the state appropriately shifted their focus to maintaining the delivery of service to their constituents in the face of a global pandemic. Special districts are ill-equipped to adapt to the current global health issue, while still having reasonable opportunity to submit comments on these important matters. While we appreciate the decision in late March to extend the deadline for submitting comments, the fact remains that a public health crisis continues to exist in our state, and special districts are focused on meeting the needs of their communities during this critical time.

Moreover, the continued consideration of the Decision in this Matter as precedential does not comport with other CalPERS efforts to ease restrictions on retired annuitants on a limited basis during the State of Emergency for the purpose of ensuring adequate staffing to expedite emergency response and recovery.² Given the fact that the gravamen of the complaint in this Matter pertains to the burden for establishing lawful post-retirement employment and the penalty faced by a retired annuitant for unlawful employment, CSDA urges the Board to delay or decline adoption of the Decision as precedential.

From a broader perspective, CSDA opposes the adoption of the Decision as precedential because it substantively fails to meet the Board's stated requirement to "include a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made, and how the law was applied."

¹ Governor Newsom issued a Proclamation of a State of Emergency on March 4, 2020. (<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>)

² See Governor's Executive Order N-25-20; CalPERS Circular Letter 200-015-20.

The Decision Declines to Apply a Three-Year Statute of Limitation – With No Analysis Explaining **Why**

Of particular concern to special districts in the Decision is the finding that the three-year limitation on actions “where the system makes an erroneous payment to a member or beneficiary” is not applicable.³ The Decision instead applies Government Code section 21220, which requires “reimbursement of all retirement benefits paid during that period, regardless of time such payments were made.” In support, the Decision simply provides a conclusory statement regarding what the “Legislature intended” and argues that applying section 20164 would “lead to absurd results” without articulating what absurdities may arise. The Decision provides no other analysis supporting why section 21220 is appropriate rather than section 20164, as applied to the factual circumstances in the case. To date, no other binding or precedential decision in the California Courts has reached the same conclusion.

The Adverse Impact of the Decision Worse if SB 266 (Leyva) is Enacted

The negative impact of adopting the Decision as precedential is magnified when considering the potential impact of SB 266 (Leyva). If enacted, SB 266 would potentially expose special districts to liability for disallowed compensation deducted from a retiree as a result of the “employer’s error.” The bill passed both houses last session but was pulled back from the Governor’s desk for reasons that are somewhat unclear. Nonetheless, the bill is still active and is likely to be signed into law.

Many public agencies have reported passing multiple CalPERS audits, only to have a subsequent audit find a violation for a post-retirement relationship that previously had no issues. The adoption of this Decision would allow CalPERS to have no consequences for these types of inconsistencies, while local governments would simultaneously face the financial burden of paying the amount of disallowed compensation to the retired member.

For the foregoing reasons, CSDA respectfully urges the Board to decline to adopt the Decision “In the Matter of the Appeal Regarding Post Retirement Employment of DUDLEY J. LANG” as precedential. Alternatively, we strongly urge the Board to postpone such decision until the public health crisis in California has subsided, and local governments in California may give this matter the serious attention it deserves. Should you have any questions about our position on this matter, please feel free to contact me at [REDACTED] or [REDACTED].

Sincerely,


Dillon Gibbons

Senior Legislative Representative

CC: Henry Jones, President CalPERS Board
Marcie Frost, Chief Executive Officer, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Brad Pacheco, Deputy Executive Officer, Communications & Stakeholder Relations, CalPERS

³ Cal. Gov. Code § 20164(b).