

**Orange County
Issues Overview
Resolution No. 01-410**

prepared for the

**Board of Supervisors
of Orange County**

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**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 ...

Board Member	December 4, 2001
Janet Nguyen	No
John M.W. Moorlach	No
Bill Campbell	No
Chris Norby	No
Patricia C. Bates	No

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
