

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
JARELY M. RUIZ
ROBIN A. PEDERSON
DANIELLE M. BERGNER
CHRISTINE M. QUINN
Assistant City Attorneys

June 2, 2011

To the Honorable Committee
on Finance & Personnel of the
Common Council of the
City of Milwaukee
Room 205 – City Hall

Re: CCFN 110201 – A substitute charter ordinance relating to pre-tax
pension deductions for employes of city agencies.

Dear Committee Members:

Enclosed is a substitute resolution establishing that certain member contributions funded by city agencies shall be treated as pre-tax salary deductions and implemented pursuant to the provisions of Internal Revenue Code sec. 414(h)(2).

Section 36-08-7-o of the MCC, entitled "Pre-Tax Deductions," was originally added to Chapter 36 prior to the enactment of 36-08-7-a-2 (which requires certain city employees hired on or after January 1, 2010 to contribute 5.5% of their earnable compensation as member contributions) in order to ensure that such employee-paid member contributions were treated as pre-tax, pick-up contributions under IRC sec. 414(h)(2). According to the Internal Revenue Service's Revenue Ruling 2006-43,

a contribution to a qualified plan established by a State government will not be treated as picked up by the employing unit under § 414(h)(2) unless the employing unit:

(1) Specifies that the contributions, although designated as employee contributions, are being paid by the employer. For this purpose, the employing unit must take formal action to provide that the contributions on behalf of a specific class of employees of the employing unit, although designated as employee contributions, will be paid by the employing unit in lieu of employee contributions. A person duly authorized to take such action with respect to the employing unit must take such action. The

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 • Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

To the Honorable Committee
on Finance & Personnel of the
Common Council of the
City of Milwaukee
June 2, 2011
Page 2

action must apply only prospectively and be evidenced by a contemporaneous written document (e.g., minutes of a meeting, a resolution, or an ordinance).

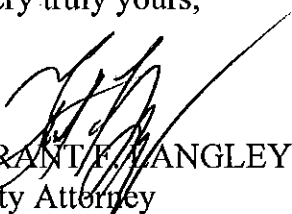
...

The purpose of this substitute resolution is to include references of "city agencies" so as to clarify the intent that contributions made by *all* employer groups under Chapter 36 on behalf of their employees would be treated as picked up by the employing units. Please note that even though the contributions would technically be made by the employees as salary deductions, as opposed to by the employers, the contributions would be 'picked up' by an employer within the meaning of section 414(h)(2) of the IRC, thus enabling favorable pre-tax treatment.


In anticipation of the enactment of 2011 Wisconsin Act 10, which, as we have opined, would require employees of city agencies to contribute their 5.5% member contribution to the pension fund, we believe that this resolution will strengthen the intent of treating such employee-paid contributions as pre-tax.

In view of the foregoing, it is recommended that this ordinance be approved.

Very truly yours,



GRANT E. ANGLELY
City Attorney



BETH CONRADSON CLEARY
Assistant City Attorney

1049-2011-1519:169966
BCC:bcc
enclosure