

Opinion: EDC CAO contract may be illegal

By Larry Weitzman

Some habits are hard to change as El Dorado County government has the habit of appearing to violate the law. One of the most recent transgressions was what appears to be the illegal hiring of interim CAO Larry T. Combs.

Combs is a CalPERS annuitant, meaning he has retired from a government job which has its pension system run by CalPERS and from whom Combs receives 93 percent of his retirement pay which approaches \$196,000 annually just from CalPERS. Combs also receives \$14,000 annually from a non-CalPERS source related to a two-year stint as Merced County CAO.



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As a result of a recent campaign against double dipping, a practice where a government employee would retire, collect his/her generous pension and then hire on to another high paying government job, collecting a \$150K from their retirement and then another \$200K from their new salary. If that were still allowed, a CAO like Combs would be making \$400K.

Over the last several years the Legislature and governor have modified and passed new legislation to prevent double dipping by making the hiring of retired CalPERS “annuitants” into new

jobs while collecting their pensions a no-no by making such a move a "reinstatement" which stops their current pension and requires a repayment from the annuitant and also requires their new employer make CalPERS retirement contributions on their new job. However, the legislation made a few exceptions, where annuitants such as Combs could work for a public agency and still collect his pensions under very strict conditions and rules mostly set forth in two Government Code sections, 21221 (h) and 21224. And this is where it gets sticky, mostly for Combs, but for the county as well.

It appears the county and Combs failed to follow the law and regulations in hiring Combs. Perhaps they didn't know the law, but in my research of this matter, I found legal memos, published papers and articles by law firm after law firm explaining the rules, including a law firm that the county has hired many times in employment issues and has paid tens of thousands of dollars, Liebert Cassidy Whitmore. All of these firms specialize in government matters and would be considered experts as our county believes of Liebert Cassidy and Whitmore.

There are at least two significant legal violations regarding the Combs contract, either of which would require Combs to return to CalPERS all pension money paid to Combs which by this month will amount to about \$120,000 because CalPERS would cause Combs to be reinstated as of the date of the contract which in this case is June 29, 2015. Additionally, EDC would be required to make pension contributions as a result of Combs' employment.

Government Code Section 21221 (h) sub paragraph 2) says that before EDC can hire an interim CAO who is a CalPERS annuitant (retired, collecting a CalPERS pension), an open recruitment for a permanent replacement must have been initiated prior to hiring the interim employee (Combs). CalPERS even provides sample resolutions for use by CalPERS members (EDC) to use when hiring CalPERS annuitants containing the following

language "Whereas, an appointment under Government Code section 21221 (h) requires an active, publically posted recruitment for a permanent replacement:" It's a requirement to prevent double dipping. And this is where it gets disgusting.

EDC did not have such of a recruitment going on at the time Combs' contract became effective. In fact, it wasn't until Dec. 15, 2015, nearly six months after Combs started working for EDC, that the BOS authorized Combs to enter into a contract with a recruitment firm for a permanent CAO. (Item 49, Legistar No. 15-1450). The legistar number reflects this was the first attempt at a recruitment for a permanent CAO.

Code section 21221(h) also requires the contract to be on an interim basis and must have an end date. CalPERS in its Circular Letter 200-002-14 writes as to the mandated limited duration appointment (such as Combs): "A retiree can be appointed only once to the position, thus the employment terms must specify an end date and cannot be amended to extend the appointment term." In the Legislative Counsel's Digest for these legislative bills it was deemed such appointments were "to be of a limited duration." Unfortunately for the county and Combs the executed contract does not have an end date. While it claims to be terminable at will, there is no end date, therefore making the contract indefinite and not even close to a limited duration contract as required by the code. A second clear violation.

Pursuant to the code sections designed to prevent double dipping, Combs should be reinstated and a demand should be made by CalPERS for the return of all pension dollars paid by CalPERS to Combs from Combs. On top of that CalPERS should and most likely will demand from our county a CalPERS contribution because of the salary paid to Combs.

Our former county counsel demonstrated time and again her incompetence with this contract. The specific terms and

conditions of what's required for an employment contract with a CalPERS annuitant to not be considered double dipping is well known. There are over a half a dozen public law firms that have recently published papers on this subject. Furthermore, Combs after being in government for 30 years or more, mostly at high levels, should have known the rules like he knows his birth date.

A CalPERS investigation has been commenced.

"In a government of laws, the existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy." – Supreme Court Justice Louis Brandeis, 1916-39.

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