

MEMO# 17125

February 23, 2004

CALIFORNIA ATTORNEY GENERAL'S OPINION CONCLUDES THAT SCHOOL DISTRICTS CANNOT IMPOSE FEES UPON PLAN PROVIDERS TO COVER COSTS

[17125] February 23, 2004 TO: PENSION MEMBERS No. 15-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 17-04 RE: CALIFORNIA ATTORNEY GENERAL'S OPINION CONCLUDES THAT SCHOOL DISTRICTS CANNOT IMPOSE FEES UPON PLAN PROVIDERS TO COVER COSTS The Attorney General of California has issued the attached Opinion No. 03-1005, which concludes that a California school district cannot assess a fee upon providers of deferred compensation plans, such as section 403(b) arrangements, to cover its costs of administering the plans for district employees. The Attorney General previously ruled in 1974 that school districts could not assess such fees under the California Education Code. Sections 35160 and 35160.1 of Education Code were added to the Education Code in 1976, however, to grant broad powers and flexibility to school districts in conducting their programs and activities. Late last year, the Attorney General was requested to opine whether "[i]n light of a school district's broad authority to conduct its programs and activities, a school district [may] assess a fee upon providers of deferred compensation plans to cover its costs of administering the plans for district employees." Under the revised provisions, however, the school districts remain limited to activities that are "not in conflict with or inconsistent with, or preempted by, any law."¹ The Opinion notes that section 44041 of the Education Code requires that school districts provide payroll deductions for a deferred compensation program "without charge," and concludes that a school district's adoption of the administrative charges in question would be inconsistent with the terms of section 44041. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17125, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17125. ¹ Cal. Education Code 35160.