



Marin IJ Editorial: Intimidating a taxpayer with court fees



David Brown. May 2, 2016

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A Mill Valley taxpayer's quest for a court ruling on whether the county violated state law in its approval of employee enhancements more than a decade ago was opposed with taxpayer dollars.

The county supervisors allowed county staff to spend up to \$50,000 to contest David Brown's lawsuit. His suit seeks a court ruling to bring clarity to the legal fuzziness surrounding approval of pension increases that are now a driving factor in local tax increases and cuts in public services.

The county went a step too far, however, including a chilling demand that Brown pay its legal fees. It turned a quest regarding public policy into a legal poker game.

On Thursday, Brown, who had been representing himself, announced that he could not afford to proceed with his complaint.

Last year's grand jury found the county, the city of San Rafael and the Novato and Southern Marin fire districts may have violated state law that requires greater public notification about the long-term taxpayer cost before approval of pension increases.

In the county's response, the board said its process did not "fully comply" with the state law.

Pretty fuzzy.

We hope that's not the threshold county officials use for enforcing traffic laws or building codes.

Brown's lawsuit said the county's response was tainted by conflicts of interest shared by four of the supervisors, County Administrator Matthew Hymel and County Counsel Steve Woodside.

Woodside had responded to a similar complaint when he was Sonoma County's county counsel. Hymel and the supervisors are members of the county pension fund.

Brown's lawsuit asked the court to determine whether the officials have a financial conflict in defending the county's actions.

Woodside called Brown's lawsuit "an abuse of the legal process." The county asked the court that if it prevailed, Brown be ordered to pay its legal costs.

Such a heavy-handed strategy sends a message to taxpayers that they risk substantial financial penalty if they question the county in court.

It was an approach that chills taxpayer challenge.

Brown is a staunch advocate for cost-saving reforms to public pensions. He does not have a reputation for filing frivolous lawsuits, for which such an intimidating strategy should be reserved.

There is no question that the growing short- and long-term cost of public pensions has, in recent years, become a big share of local government's budgets.

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Many of the enhancements approved by public agencies were OK'd with little public awareness and notice.

The grand jury took local agencies to task for "a lack of transparency" and possibly violating a state law requiring greater public notice and avenues for involvement in a process that mostly takes place behind closed doors.

If public audits were done, detailing the short- and long-term costs of those enhancements, little effort was made to let the public know about their availability.

The grand jury said of the county's actions, "the citizens of Marin County were never given proper notice about pension increases that are now costing them millions of dollars."

It may not have been a big issue when these pension boosts were approved, as their short-term cost to taxpayers was amply covered by double-digit returns from agencies' investment pools. But the recession brought a different and budget-shaking perspective to those promises made 10 to 15 years ago.

Brown's lawsuit may have been clearer by simply focusing on asking a court to rule on whether those approvals complied with state law. But his civic-spirited search for legal clarity did not deserve the intimidation tactics, wielded by the county with public dollars, against a well-meaning taxpayer.

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