



A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
ATTORNEYS AT LAW

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May 29, 2015

Board of Trustees  
Jacksonville Police and Fire Pension Fund  
1 West Adams Street  
Jacksonville, Florida 32202

Re: Senior Staff Voluntary Pension  
Our File 900342

Dear Trustees:

This letter is in response to the Chairman's request, on behalf of the Board, for a summary of the history of the Senior Staff Pension and all of the supporting documents. Much of the information contained in this letter was also addressed in my September 2012 opinion, a copy of which is attached as an appendix.

### **Executive Summary**

Since the independent agency was created by the 1990 Special Act which became Chapter 22 of the City Charter, the Board has had the power to hire and compensate its staff. This is consistent with the general revision to Chapters 175 and 185, Fla. Stat (specifically 175.071 and 185.06), which created the same powers for all municipal police and fire pension fund boards of trustees in 1986. The Senior Staff Pension was created in 2000 to replace a defined contribution plan which was originally created in 1998. The contribution rate in the original DC plan replicated the FRS contribution rate but was deemed inadequate by the Board following a more than year-long study because the benefit yielded was not reflected by the high contribution cost. All of the meetings

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regarding the senior staff plan were publicly noticed and all decisions made at public meetings.

The Board requested and received a legal opinion that the plan was authorized by the City Charter which gave the Board the exclusive right to hire and compensate employees. The plan and the accounting required to maintain it have been in every report to the City Finance Department and auditors since its creation in 2000.

The City General Counsel's Office (OGC) opined that only the City could establish a pension plan for City employees based on Article 16 of the City Charter. We concur; but as the OGC had previously opined, certain employees of the Police and Fire Pension Fund are not city employees<sup>1</sup>. JTA, the Airport, Seaport, and JEA all maintain separate retirement plans for certain of their employees who are also not city employees. None of those plans were adopted by the City Council. The City Council, Mayor, and constitutional officers such as the sheriff, tax collector, etc. are all in the Florida Retirement System.

The current Senior Staff plan has only three participants; one retiree, one surviving spouse, and one active member. The plan is fully funded.

The Board has plenary authority under state law (the City Charter) to hire and compensate its employees. Pension, by its very definition, is deferred compensation. The plan has been maintained in accordance with Chapter 112, Part VII, Florida Statutes and the operative provisions of the Internal Revenue Code.

### **Detailed Opinion**

The following is an updated version of the September 2012 legal opinion with tabbed references to each of the documents discussed.

### **Authority of the Board**

The Board's powers and duties are set forth in Article 22 of the City Charter, as well as Chapters 112, 175 and 185, Florida Statutes. The operative provisions of each law are attached. The provisions of Article 22 are themselves a combination of Special Acts of the Florida Legislature. The actual Special Acts are attached.

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<sup>1</sup> Certain administrative employees of the Fund either transferred from other City departments or were hired from the City civil service lists. Those individuals are eligible for the City retirement System.

Section 22.04 grants the Board broad powers, including the ability to fix the compensation of its Administrator. The enumeration of powers is not intended to be exclusive and any determination by the Board made in good faith is final, binding and conclusive on all parties, including the City. Moreover, Section 22.11 repeals any law in conflict with 22.04, which would include any asserted conflict with Article 16 of the Charter. The interrelationship between Articles 16 and 22 is discussed later in this opinion. Article 16 of the Charter is attached.

### **Is a Retirement Benefit “Compensation?”**

Beginning with the decision of *Voorhees v. City of Miami*, 199 So. 313 (Fla. 1940), the Florida Supreme Court has recognized that a retirement benefit is deferred compensation to an employee for services rendered:

Such benefits are being gradually extended. Laws so providing are sustained as valid and constitutional, on the ground that pensions are in the nature of compensation for services previously rendered and for which pay was withheld to induce long continued and faithful service.

Since that seminal decision, the Florida appellate courts (both the Supreme Court and the various district courts of appeal) have uniformly held the same view. *See, e.g., State ex. rel. Watson v. Lee*, 24 So. 2d 798 (Fla. 1946); *State ex. rel. Greene v. Gray*, 87 So. 2d 504 (Fla. 1956); *City of Jacksonville Beach v. State ex. rel. O’Donald*, 151 So. 2d 430 (Fla. 1963); *Grady v. Division of Retirement*, 387 So.2d 419 (Fla. 1<sup>st</sup> DCA 1980); *Board of Trustees v. Town of Lake Park*, 966 So. 2d 448 (Fla. 4<sup>th</sup> DCA 2007).

In interpreting a statute (such as the City Charter), words are given their plain and ordinary meaning. *School Board v. Survivors Charter School*, 3 So. 2d 1220 (Fla. 2009). In light of 70 years of jurisprudence, the word "compensation" unquestionably includes a retirement benefit.

### **Article 16 of the City Charter is Not Applicable**

Article 16 refers to the establishment of retirement plans for employees of the City. The Board is a separate body politic. Chapters 120 and 121 of the Ordinance Code specifically define eligible participants as employees of the City and specified agencies. Operative provisions of Chapters 120 and 121 are attached. The Fund is not listed as an eligible agency and therefore, neither would its employees be eligible.

The definition of the word "City" in Ordinance Code Section 120.201 does not include the Police and Fire Pension Fund.

Similarly, the Fund is not eligible for membership in the Florida Retirement System. The Jacksonville Seaport and Jacksonville Airport employees are members of FRS, as both of those agencies were created as "agencies of Duval County." The operative provisions of the documents creating the respective port authorities are attached. (This office, at the request of the General Counsel, secured the proper placement of airport and seaport employees in FRS after they were erroneously enrolled in the City Retirement System).

Likewise, the members of the Jacksonville City Council and the Mayor are participants in the Elected Officer Class of FRS, as they are "county" officers and not "city officers or employees" as defined in Article 16 of the Charter. (This office, at the request of the General Counsel, obtained an opinion from the Attorney General of Florida securing membership of the City Council, Mayor, and other constitutional officers in FRS' Elected Officer Class. *See*, AGO 2003-46, a copy of which is attached).

However, the staff of the Police and Fire Retirement Fund who are enrolled in the Senior Staff Voluntary Pension were not, and are not, City employees (there is only one active participant in the Plan. The other two participants are a retiree and a surviving spouse). The Police and Fire Pension Fund has a separate employer identification number with the Internal Revenue Service than does the City<sup>2</sup>. Unlike the City, the Fund is a Social Security contributing employer. The senior staff are (or were) employees of the Fund, not the City.

The former General Counsel issued an opinion in August 2012 that the Senior Staff Plan was not authorized because Article 16 of the Charter made reference to the only authorized plans for City officers or employees. As noted above, the three participants in the Senior Staff Plan are current or former employees of the Board<sup>3</sup>, not the City. Former Assistant General Counsel Steven Rohan issued an opinion, a copy of which is attached, stating that employees of the Fund are not employees of the City.

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<sup>2</sup> The Senior Staff Voluntary Pension Plan is governed by the same IRS provisions that otherwise govern a plan providing benefits to governmental employees. Benefits payable by the plan are subject to the limits in the Tax Code.

<sup>3</sup> The actual juridical entity which manages the System and employs a staff and consultants is the Board.

Like the Fund, the other independent agency employees are not employees as defined in Article 16 of the Charter. As a result, the Fund is not the only independent agency with its own retirement plan. The JEA is a partner in the St. Johns River Power Park (SJRPP). Its public employees (some employees are deemed employees of Florida Power and Light and are enrolled in FPL's retirement plan) are members of the SJRPP plan which was created by and maintained by the JEA. The control which JEA has over the SJRPP retirement plan, separate from the City Council, is explained by the Florida Public Employees Relations Commission in *Local Union 1618 v. SJRPP*, 39 FPER 215 (Fla. PERC 2012)<sup>4</sup>. In that case, PERC upheld the JEA's authority to create a new cash balance retirement plan for SJRPP employees<sup>5</sup>. The Jacksonville Transportation Authority maintains a similar arrangement through Jax Transit Management. An ERISA plan was in effect for unionized bus drivers employed by the Jacksonville Coach Company. A wholly owned subsidiary corporation was created by JTA to manage this plan for a class of current JTA employees who are not members of the Florida Retirement System. JTA Board has amended the plan at various times since acquiring the former coach company without submitting those amendments to the City Council. Former General Counsel Laquidara served as counsel for the JTA plan.

None of those plans was created under Article 16 of the Charter as none of the affected employees is a "City" employee as defined in Chapter 120 of the Ordinance Code, particularly Sections 120.202 and 120.204. The Police and Fire Pension Fund is excluded as a covered City agency. The City Council adopted a major rewrite of the general retirement plan in 2005. It conferred substantial time connection rights on members of various agencies (see 120.204), but chose not to open membership to staff of the Police and Fire Pension Fund. Under the statutory construction doctrine of *expressio unius est exclusio alterius* (the inclusion of specific things means the exclusion of those things not mentioned) it is clear that the City Council did not intend to include the employees of the Board as City employees. Documents regarding the SJRPP and JTA plans are attached.

The City Council's Authority under Article 16 is inapplicable to the Police and Fire Retirement System because its senior staff was not, and is not, within the definition of "City" employees. The Florida Legislature, in empowering the Police and Fire Pension Board as a body politic with the power to compensate its own employees, and repealing

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<sup>4</sup> FPER is the acronym for the Florida Public Employee Reporter, the official case publication for the Florida Public employee Relations Commission.

<sup>5</sup> The cash balance plan was designed by the undersigned who drafted and advised JEA on its adoption. The City Council played no role in the creation of this plan.

any Charter provision in conflict, unquestionably enabled the Board to establish the Senior Staff Voluntary Pension Plan.

**Only the Florida Legislature has Amendatory Authority over the Board of Trustees**

The Board itself may not amend the terms of the Police and Fire Pension Plan benefits payable to police officers and firefighters. That is a prerogative of the Council.<sup>6</sup> The powers of the Board, however, were created by and can only be amended by the Florida Legislature. A City ordinance may not supersede a state statute. *See Thomas v. State*, 614 So.2d 468 (Fla. 1993).

Even without the special act creating the Board, the general law provisions of chapters 175 and 185 provide ample power to the Board to determine the nature and amount of the compensation of their employees. Chapters 175 and 185 empower the Board of Trustees to be the sole judge of the plan provisions, subject only to judicial review. *See Section 175.061 and 185.06, Florida Statutes*. As the agency charged with administering the Fund, the Board's interpretation is accorded great weight and will not be overturned unless clearly erroneous. *See Dept. of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815 (Fla. 1983).

**The Board's Decision to Establish the Senior Staff Voluntary Pension in 1999 was Meets the Legal Definition of Good Faith**

According to the City Charter, all decisions of the Board made in good faith are "final, binding, and conclusive" on all parties, including the City. Florida law sets forth a clear standard of good faith in assessing the actions of public officials. It is presumed that public officials properly perform their duties and that they carry them out in good faith. It is presumed that they know what their authority is under the law and that such laws have been faithfully observed. *City of Miami v. Gioia*, 215 So.2d 780 (Fla. 3d DCA 1968).

As evidenced by the extensive documents provided previously to the City Ethics Office, the Board carefully considered a number of alternative retirement plans for its senior staff. An actuarial analysis was performed during the process. Chapter 112, Part VII

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<sup>6</sup> Such changes are also implicated by the Board's settlement agreement with the City (the legal status of which is currently in litigation) and collective bargaining. That agreement and the collective bargaining laws are not the subject of this opinion.

exempts certain types of retirement plans from the reporting and periodic actuarial valuations of the statute. The operative provision of the statute is as follows:

112.625 Definitions.—As used in this act:

- (1) “Retirement system or plan” means any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:
  - (a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;
  - (b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
  - (c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;
  - (d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;
  - (e) A plan described in s. 401(d) of the Internal Revenue Code of 1954;  
or
  - (f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

The above requirements of Section 112.625(1)(b), Florida Statutes, actually exempted the Senior Staff Plan from immediate actuarial funding requirements, which was maintained as an unfunded plan until an eligible participant retired. As a result, the Senior Staff Plan was maintained in compliance with Chapter 112, Part VII, at all times and all filings with the Division of Retirement have been “State accepted.”

At the time Richard Cohee was hired by the Fund, his agreement provided for the Fund to create a retirement program which replicated the Florida Retirement System. The Senior Staff Voluntary Pension benefit structure met that standard, except that, unlike FRS, the Senior Staff plan always required a significant employee contribution at the same rate as the police officers and firefighters pay in the Police and Fire Plan. The Mayor and City Council, who are participants in FRS, paid no contributions to their retirement plan (which has a higher multiplier than the Police and Fire Fund or the Senior Staff plan, until the Legislature altered that arrangement in 2011. (The contribution for FRS

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participants was challenged at the time of its adoption. That requirement was affirmed by the Florida Supreme Court in 2013).

The Senior Staff Voluntary Pension Plan was preceded in 1998 by a money purchase plan and later a 401(a) Plan through the ICMA, replicating the contribution rates for FRS. Those plans were costly relative to the benefit yielded. In May 1999, then Chairperson Barbara Jaffe requested a legal opinion as to the Board's authority to adopt a staff pension. The Board appointed a compensation committee consisting of two trustees who reviewed several types of retirement programs. On December 15, 1999, the Board received a report, which was a public document, outlining several options for a staff pension plan. After a year of study and consideration, the current plan was adopted in late 2000, which essentially replicates the benefits paid to Fund members. The Police and Fire Fund is generally equivalent to the FRS Special Risk (public safety) plan. All of the discussion and consideration took place at public meetings and was supported unanimously by the Board, which included three taxpayers of the City as well as the two elected employee trustees (who are also taxpayers). Minutes of those meetings are attached. The cost of the staff plan was included in the Board budget routinely reported to the City Council.

Any claim that the plan is unenforceable would violate clear precedent from the Florida Supreme Court. *Branca v. City of Miramar*, 634 So. 2d 604 (Fla. 1994). Further, the standard of deference to the Board's decision making process has been judicially approved. In *Starling v Jacksonville Police and Fire Board of Trustees*, 656 So.2d 289 (Fla. 1<sup>st</sup> DCA 1995), the court considered a challenge to the Board's method of calculating pension benefits and found that the Board's construction of the plan "was rendered in good faith" and refused to disturb the Board's exercise of discretion. This is consistent with a long line of Florida jurisprudence that courts defer to the agency responsible for administering a statute. See, e.g., *Blaesser v. State Board of Administration*, 134 So.3d 1013 (Fla. 1<sup>st</sup> DCA 2012)(court with defer to Florida Division of Retirement on plan interpretation).

The conclusion reached in *Starling* was also reached by the Supreme Court of Texas in a recent opinion construing comparable language in the Houston Municipal Employee Plan, also created by Special Act of the Texas Legislature.

In *Klumb v. Houston Municipal Employees Pension System*, 2015 WL 1276557 (Tex. 3/20/15), the Texas Supreme Court upheld the statutory right of a Board of Trustees to interpret the retirement plan. The City created a local government services corporation and transferred a number of city employees to the new corporation. The Municipal Employees Retirement System insisted that the transferred employees were still required



to be members of the plan. The members sued and the City intervened on their behalf. The Houston plan document<sup>7</sup> allows the Board of Trustees to determine all questions concerning interpretation of the plan. In addition, the plan document provides that the Board's decisions are "final and binding."

A Texas trial court dismissed the suit finding that absent an unauthorized act, the state law making the Board's decision final and binding precluded the court from taking jurisdiction. An appeals court agreed.

On review, the Texas Supreme Court held that the decision of the trustees to retain employees in the plan was rationally related to their fiduciary duty to maintain the integrity of the System. The Court found that as a result, the Board's decision was authorized by its broad statutory powers and the Board's decision was "final and binding."

While a Texas case is not binding on a Florida court, Florida appellate courts frequently look to the comparable federal or sister state cases for guidance on similar statutory provisions. See, *United Teachers of Dade v. Dade County School Board*, 500 So.2d 508 (Fla. 1986).

### **The Voluntary Nature of the Plan Conferred Immediate Contract Rights**

Florida law has long recognized the distinction between voluntary and mandatory plans. In a voluntary plan, constitutionally protected contract rights attach immediately. See *Anders v. Nicholson*, 150 So. 639 (Fla. 1939); *City of Jacksonville Beach v. State ex. rel. O'Donald*, 151 So. 2d 430 (Fla. 1963); *Nation v. City of Ft. Lauderdale*, 419 So. 2d 630 (Fla. 1982). As such contract rights have been in place for many years, both contract and equity principles do not permit their cancellation. Nothing prohibits the City from opening the membership of the City Retirement System to the senior staff of the Fund. Were that to occur, there would not be a need to maintain the Senior Staff Plan for new hires.

### **Practices in Comparable Systems**

The retirement benefit practices for senior staff of plans vary around the country. Generally, the staff are made participants of the system they administer, even if the staff is not in the same employment class as the members of the underlying plan. For

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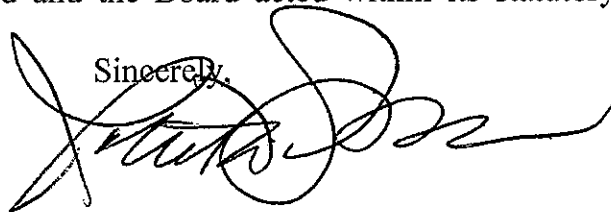
<sup>7</sup> The Houston plan document is a Texas state statute, Tex. Rev. Civ. Stat. Art. 6243h.

example, staff of the Louisiana Sheriffs Pension Plan are in that system, even though they are not law enforcement officers. Members of the City of Jacksonville Retirement System who transfer to the employment of the Board remain in the City System. The City of Miami General Employees and Sanitation Employees Retirement Plan and the City of Ft. Worth Employees Retirement System each has a staff pension virtually identical to Jacksonville, created by Board rule. Some administrators are independent contractors and include a cost for retirement as part of the contract price. It should also be noted that several years ago the Board of Trustees engaged a highly regarded actuarial and human resources firm (which now serves as the actuaries for the Jacksonville City Retirement System) to do a compensation survey, which included the value of staff pension benefits, and was found to be within the relevant market. For further examples of retirement benefits provided to public pension plan administrators, you may review the job opportunities listings on the website for the National Association of State Retirement Administrators, [www.nasra.org](http://www.nasra.org).

### **Conclusion**

It is clear from the plain language of the Charter and more than 70 years of case authority that the Board has the clear right to create and maintain a retirement program for its Senior Staff employees as part of their compensation. Our view, as expressed in 1999 and again in 2012, remains unchanged and the Board acted within its statutory authority.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert D. Klausner', written over the word 'Sincerely,'.

ROBERT D. KLAUSNER

RDK:ls

# **APPENDIX 1**

**SEPTEMBER 25, 2012 OPINION**



A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
ATTORNEYS AT LAW

Writer's e-mail: [bob@robertdklausner.com](mailto:bob@robertdklausner.com)

September 25, 2012

Board of Trustees  
Jacksonville Police and Fire Pension Fund  
1 West Adams Street  
Jacksonville, Florida 32202

Re: Senior Staff Voluntary Pension  
Our File 900342

Dear Trustees:

This letter is in response to your request for a legal opinion concerning the ability of the Board of Trustees to establish a retirement program for employees of the Board. For the reasons which follow, the Florida Legislature has fully empowered the Board to create such a plan.

#### **Authority of the Board**

The Board's powers and duties are set forth in Article 22 of the City Charter, as well as Chapters 112, 175 and 185, Florida Statutes. The provisions of Article 22 are themselves a combination of special acts of the Florida Legislature. Your attention is directed to Section 22.04 which grants the Board broad powers, including the ability to fix the compensation of its Administrator. The enumeration of powers is not intended to be exclusive and any determination by the Board made in good faith is final, binding and conclusive on all parties, including the City. Moreover, Section 22.11 repeals any law in conflict with 22.04, which would include any asserted conflict with Article 16 of the Charter. The interrelationship between Articles 16 and 22 is discussed later in this opinion

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### **Is a Retirement Benefit "Compensation?"**

Beginning with the decision of *Voorhees v. City of Miami*, 199 So. 313 (Fla. 1940), the Florida Supreme Court has recognized that a retirement benefit is deferred compensation to an employee for services rendered:

Such benefits are being gradually extended. Laws so providing are sustained as valid and constitutional, on the ground that pensions are in the nature of compensation for services previously rendered and for which pay was withheld to induce long continued and faithful service.

Since that seminal decision, the Florida appellate courts (both the Supreme Court and the various district courts of appeal) have uniformly held the same view. *See, e.g., State ex. rel. Watson v. Lee*, 24 So. 2d 798 (Fla. 1946); *State ex. rel. Greene v. Gray*, 87 So. 2d 504 (Fla. 1956); *City of Jacksonville Beach v. State ex. rel. O'Donald*, 151 So. 2d 430 (Fla. 1963); *Grady v. Division of Retirement*, 387 So.2d 419 (Fla. 1<sup>st</sup> DCA 1980); *Board of Trustees v. Town of Lake Park*, 966 So. 2d 448 (Fla. 4<sup>th</sup> DCA 2007).

In interpreting a statute (such as the City Charter), words are given their plain and ordinary meaning. *School Board v. Survivors Charter School*, 3 So. 2d 1220 (Fla. 2009). In light of 70 years of jurisprudence, the word "compensation" unquestionably includes a retirement benefit.

### **Article 16 of the City Charter is Not Applicable**

Article 16 refers to the establishment of retirement plans for employees of the City. Chapters 120 and 121 of the Ordinance Code specifically define eligible participants as employees of the City and specified agencies. The Fund is not listed as an eligible agency.

Similarly, the Fund is not eligible for membership in the Florida Retirement System. The Jacksonville Seaport and Jacksonville Airport employees are members of FRS, as both of those agencies were created as "agencies of Duval County." This office, at the request of the General Counsel, secured the proper placement of airport and seaport employees in FRS after they were erroneously enrolled in the City Retirement System.

Likewise, the members of the Jacksonville City Council and the Mayor are participants in FRS, as they are "county" officers. This office, at the request of the General Counsel, obtained an opinion from the Attorney General of Florida securing membership of the City

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Council, Mayor, and other constitutional officers in FRS' elected officer class. *See*, AGO 2003-46.

However, the staff of the Police and Fire Retirement Fund who are enrolled in the Senior Staff Voluntary Pension were not, and are not, City employees (there is only one active participant in the Plan. The other two participants are a retiree and a surviving spouse). The Police and Fire Pension Fund has a separate employer identification number with the Internal Revenue Service than does the City<sup>1</sup>. Unlike the City, the Fund is a Social Security contributing employer. The senior staff are (or were) employees of the Fund, not the City<sup>2</sup>.

The Fund is not the only independent agency with its own retirement plan. The JEA is a partner in the St. Johns River Power Park (SJRPP). Its public employees (some employees are deemed employees of Florida Power and Light and are enrolled in FPL's retirement plan) are members of the SJRPP plan which was created by and maintained by the JEA. The Jacksonville Transportation Authority maintains a similar arrangement through Jax Transit Management. None of those plans was created under Article 16 of the Charter as none of the affected employees is a City employee. Interestingly, the City Council adopted a major rewrite of the general retirement plan in 2005. It conferred substantial time connection rights on members of various agencies, but chose not to open membership to staff of the Police and Fire Pension Fund. As the existence of the Senior Staff voluntary pension plan was a matter of public record for more than 5 years at that time, it is a reasonable conclusion that the Council saw no need to open the City retirement system membership to persons already covered by an alternate plan.

The City Council's Authority under Article 16 is inapplicable to the Police and Fire Retirement System because its senior staff were not, and are not, City employees. The Florida Legislature, in empowering the Police and Fire Pension Board as a body politic with the power to compensate its own employees, and repealing any Charter provision in conflict, unquestionably enabled the Board to establish the Senior Staff Voluntary Pension Plan.

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<sup>1</sup> The Senior Staff Voluntary Pension Plan is governed by the same IRS provisions that otherwise govern a plan providing benefits to governmental employees. Benefits payable by the plan are subject to the limits in the Tax Code.

<sup>2</sup> The Board and the City have a financial services agreement. Under that agreement, the Board and not the City performs payroll services for senior staff.

**Only the Florida Legislature has Amendatory Authority over the Board of Trustees**

The Board itself may not amend the terms of the Police and Fire Pension Plan benefits payable to police officers and firefighters. That is a prerogative of the Council.<sup>3</sup> The powers of the Board, however, were created by and can only be amended by the Florida Legislature. A City ordinance may not supersede a state statute. *See Thomas v. State*, 614 So. 2d 468 (Fla. 1993)

Even without the special act creating the Board, the general law provisions of chapters 175 and 185 provide ample power to the Board to determine the nature and amount of the compensation of their employees. Chapters 175 and 185 empower the Board of Trustees to be the sole judge of the plan provisions, subject only to judicial review. *See* Section 175.061 and 185.05, Florida Statutes. As the agency charged with administering the Fund, the Board's interpretation is accorded great weight and will not be overturned unless clearly erroneous. *See Dept. of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815 (Fla. 1983).

**The Board's Decision to Establish the Senior Staff Voluntary Pension was Made in Good Faith**

According to the City Charter, all decisions of the Board made in good faith are "final, binding, and conclusive" on all parties, including the City. As evidenced by the extensive documents provided to the Ethics Office, the Board carefully considered a number of alternative retirement plans for its senior staff. An actuarial analysis was performed during the process. Chapter 112, Part VII exempts certain types of retirement plans from the reporting and periodic actuarial valuations of the statute. The operative provision of the statute is as follows:

112.625 Definitions.—As used in this act:

- (1) "Retirement system or plan" means any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

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<sup>3</sup> Such changes are also implicated by the Board's settlement agreement with the City and collective bargaining. That agreement and the collective bargaining laws are not the subject of this opinion.

- (a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;
- (b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;
- (d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;
- (e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or
- (f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

The above requirements of Chapter 112, Florida Statutes, actually exempted the Senior Staff Plan, which was maintained as an unfunded plan until an eligible participant retired. See Section 112.625(1)(b), Florida Statutes. As a result, the Senior Staff Plan was maintained in compliance with Chapter 112, Part VII, at all times.

At the time Richard Cohee was hired by the Fund, his agreement provided for the Fund to create a retirement program which replicated the Florida Retirement System. The Senior Staff Voluntary Pension meets that requirement, with one important financial difference. Unlike FRS, which had been non-contributory since the early 1970s, the Senior Staff Plan has always required an employee contribution, at the same rate as the police officers and firefighters pay in the Police and Fire Plan. The Mayor and City Council, who are participants in FRS, paid no contributions to their retirement plan until the Legislature altered that arrangement in 2011. (The contribution for FRS participants was struck down as unconstitutional by a Circuit Court in Tallahassee and is pending review in the Florida Supreme Court).

The Senior Staff Voluntary Pension Plan was preceded in 1998 by a money purchase plan and later a 401(a) Plan through the ICMA, replicating the contribution rates for FRS. Those plans were costly relative to the benefit yielded. In May 1999, then Chairperson Barbara Jaffe requested a legal opinion as to the Board's authority to adopt a staff pension. The



Board appointed a compensation committee consisting of two trustees who *reviewed several* types of retirement programs. On December 15, 1999, the Board received a report, which was a public document, outlining several options for a staff pension plan. After a year of study and consideration, the current plan was adopted in late 2000, which essentially replicates the benefits paid to Fund members. All of the discussion and consideration took place at public meetings and was supported unanimously by the Board, which included three taxpayers of the City as well as the two elected employee trustees (who are also taxpayers). The cost of the staff plan was included in the Board budget routinely reported to the City Council. For the City to now claim that the plan is unenforceable would violate clear precedent from the Florida Supreme Court. *Branca v. City of Miramar*, 634 So. 2d 604 (Fla. 1994). Further, the standard of deference to the Board's decision making process has been judicially approved. See *Starling v. Board of Trustees*, 656 So. 2d 289 (Fla. 1<sup>st</sup> DCA 1995).

#### **The Voluntary Nature of the Plan Conferred Immediate Contract Rights**

Florida law has long recognized the distinction between voluntary and mandatory plans. In a voluntary plan, constitutionally protected contract rights attach immediately. See *Anders v. Nicholson*, 150 So. 639 (Fla. 1939); *City of Jacksonville Beach v. State ex. rel. O'Donald*, 151 So. 2d 430 (Fla. 1963); *Nation v. City of Ft. Lauderdale*, 419 So. 2d 630 (Fla. 1982). As such contract rights have been in place for many years, both contract and equity principles do not permit their cancellation. Nothing prohibits the City from opening the membership of the City Retirement System to the senior staff of the Fund. Were that to occur, there would not be a need to maintain the Senior Staff Plan for new hires.

#### **Practices in Comparable Systems**

The retirement benefit practices for senior staff of plans vary around the country. Generally, the staff are made participants of the system they administer, even if the staff is not in the same employment class as the members of the underlying plan. For example, staff of the Louisiana Sheriffs Pension Plan are in that system, even though they are not law enforcement officers. Members of the City of Jacksonville Retirement System who transfer to the employment of the Board remain in that the City System. The City of Miami General Employees and Sanitation Employees Retirement Plan and the City of Ft. Worth Employees Retirement System each has a staff pension virtually identical to Jacksonville, created by Board rule. Some administrators are independent contractors and include a cost for retirement as part of the contract price. It should also be noted that several years ago the Board of Trustees engaged a highly regarded actuarial and human resources firm (which now

September 25, 2012

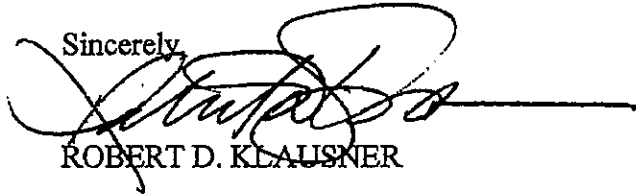
Page 7

serves as the actuaries for the Jacksonville City Retirement System) to do a compensation survey, which included the value of staff pension benefits, and was found to be within the relevant market. For further examples of retirement benefits provided to public pension plan administrators, you may review the job opportunities listings on the website for the National Association of State Retirement Administrators, [www.nasra.org](http://www.nasra.org).

**Conclusion**

It is clear from the plain language of the Charter and more than 70 years of case authority that the Board has the clear right to create and a maintain a retirement program for its employees as part of their compensation. Our view, as expressed in 1999, remains unchanged and the Board acted within its statutory authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Klausner", with a long horizontal line extending to the right.

ROBERT D. KLAUSNER

RDK:ldm

## **APPENDIX 2**

**MAY 20, 1999 OPINION**

ROBERT D. KLAUSNER, P.A.  
ATTORNEYS AT LAW

SUITE 200  
6565 TAFT STREET  
HOLLYWOOD, FLORIDA 33024

BROWARD: (954) 981-1222  
DADE: (305) 620-6565  
FAX: (954) 981-0088

May 20, 1999

Sent via Telefax and U.S. Mail

Barbara Jaffe, Chairperson  
Board of Trustees  
Jacksonville Police and Fire Pension Fund  
3200 Emerson Street  
Jacksonville, Florida 32207

Re: Employee Compensation  
Our File No. 90-0342

Dear Ms. Jaffe:

This is in response to your request for a legal opinion concerning the granting of a retirement plan to the Fund Administrator as part of his compensation. Specifically, you have asked whether the provision of such a benefit is permissible and whether prior service credit may be granted. Both questions are answered in the affirmative.

The Police and Fire Pension Fund is an independent municipal agency and the Board of Trustees is charged with the exclusive management and control of the Fund. Among the powers expressly conferred upon the Board by the City Charter and state law is the right to retain and compensate employees. Pension benefits have long been recognized by Florida courts as a form of deferred compensation, and therefore, a legitimate public expenditure.

Florida Statutes, Section 215.425 prohibits state agencies from making retroactive payments to state employees or officers. This statute, which is the only limitation of this type, expressly exempts county and municipal agencies. In other words, unless there is a local ordinance or Charter provision prohibiting such a payment, it is permitted. As the City Charter expressly authorizes the Board to set the terms of compensation for its own employees,

May 20, 1999  
Page 2

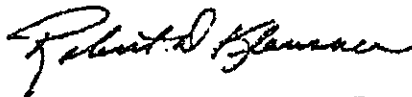
I find no legal prohibition to the granting of prior service credit. The Attorney General has reached the same conclusion in allowing Flagler County to provide past pension service credit to its County Attorney, who was hired on a contract basis and therefore not eligible to participate in the Florida Retirement System. See, Opinion of the Attorney General, 86-277. The Attorney General has also expressly recognized the power of the Board to determine all matters relating to its budget and expenditures. Opinion the Attorney General, 92-69.

Should the Board determine to exercise its discretion and grant a pension with prior service credit to an employee, it must observe the contribution limitations set forth in Section 415, Internal Revenue Code. Alternatively, the Board could provide retirement benefits through the purchase of an annuity contract. Such a contract would not be subject to 415 limitations. In determining the value of the benefits paid, you have asked whether the Board may credit anticipated earnings to that prior service credit. As long as the contribution limitations of the Internal Revenue Code are observed or an annuity is purchased, that is a matter solely within the discretion of the Board.

You have also inquired as to whether any other retirement funds in the country have provided similar benefits to their key staff. I am aware that the San Diego City Employees Retirement System Board of Trustees recently approved the purchase of additional years of pension service credit for their administrator. This purchase included both the base contribution and interest cost attributable to the benefits.

I trust that the foregoing has answered your inquiry. Should there be any additional questions, please do not hesitate to contact me.

Sincerely,



ROBERT D. KLAUSNER

RDK:ldm

**APPENDIX 3**

**ARTICLES 16 AND 22,**

**CITY CHARTER**

**Jacksonville, Florida, Code of Ordinances >> - CHARTER AND RELATED LAWS >> PART A - CHARTER LAWS CHARTER OF THE CITY OF JACKSONVILLE, FLORIDA >> ARTICLE 16. RETIREMENT AND PENSION BENEFITS >>**

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**ARTICLE 16. RETIREMENT AND PENSION BENEFITS**

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Section 16.01. Retirement and pension system authorized.

Section 16.02. Existing plans continued.

Section 16.03. Amendment of prior plans in certain respects.

Section 16.04. Election of membership by certain employees and membership of handicapped employees.

Section 16.05. Police and correctional officers; special provisions relative to disability.

Section 16.06. Funding and enhanced pension benefits for correctional officers.

**Section 16.01. Retirement and pension system authorized.**

All officers and employees of the consolidated government employed after the effective date of this charter shall be members of the 1937 police and fire department pension fund of the City of Jacksonville, under the provisions of chapter 18615, Acts of 1937, as amended, or the 1937 pension fund for employees of the City of Jacksonville, under the provisions of chapter 18610, Acts of 1937, as amended, and such system shall be the retirement and pension system for the consolidated government. The council shall have the authority to amend said retirement and pension system to provide a separate classification or classifications, including provisions relating to eligibility, contributions, required services, retirement age and benefits thereunder, for officers and employees becoming members of said retirement and pension system after the effective date of this charter. Nothing in this section shall impair or diminish the rights and privileges, including rights and privileges of social security coverage, to which employees of former governments may be entitled under retirement and pension plans of or under former governments on the effective date of this charter.

(Laws of Fla., Ch. 69-1172; Ord. 84-1307-754, § 14; Laws of Fla., Ch. 92-341, § 1)

**Section 16.02. Existing plans continued.**

Retirement and pension plans of former governments existing immediately prior to the effective date of this charter shall continue as retirement and pension systems of the consolidated government and all benefits and rights under such plans shall continue unimpaired for the same duration provided in such plans and shall constitute an obligation and liability of the consolidated government. The council may increase rights and benefits under any retirement or pension plan of a former government but may not decrease such rights and benefits. All officers and employees of former governments entitled to benefits under any such plan shall continue to be entitled to such benefits, and for the purpose of all such plans service with the consolidated government shall constitute service under the plans. An officer or employee entitled to benefits under a retirement or pension plan of a former government may elect instead to be covered by the system authorized by section 16.01 but may not be required to make such election. Officers and employees of former governments not covered by existing pension plans on the effective date of this charter who becomes employees of the consolidated government shall not be eligible to enter the plans of the former government but may be eligible for participation in the system authorized by section 16.01, to the extent qualified by the appropriate pension advisory committee.

(Ord. 84-1307-754, § 14; Laws of Fla., Ch. 92-341, § 1)

### **Section 16.03. Amendment of prior plans in certain respects.**

The council shall have the power to amend any plans of former governments and to establish which officers of the consolidated government are responsible for the administration of the plans and the handling and investment of funds under such plans. The council shall also have the discretionary power to determine that interrupted service of any officer or employee of former governments shall be treated as continuous service for the purpose of any retirement or pension plan of a former government.

(Ord. 84-1307-754, § 14; Laws of Fla., Ch. 92-341, § 1)

### **Section 16.04. Election of membership by certain employees and membership of handicapped employees.**

Notwithstanding the provisions of section 16.01:

- (a) Any employee of the City of Jacksonville who is not in the civil service system of the city nor any elected or appointed officer of the city shall be required to become a member of the retirement and pension system of the City of Jacksonville, but any noncivil service employee or elected or appointed officer may elect to become a member of the retirement and pension system of the City of Jacksonville by filing a written notice of election with the trustees of the pension funds of the city retirement and pension system. Upon the filing of the notice of election, the membership of the officer or employee in any other public pension fund of which he may be a member shall terminate.
- (b) Any person employed by the City of Jacksonville in the health and welfare department on or after October 1, 1968, who was or shall be a member of the State and County Officers and Employees Retirement System provided for in chapter 122, Florida Statutes, at the time of such employment, shall not be required to become a member of the retirement and pension system of the City of Jacksonville, but may elect to discontinue membership in the State and County Officers and Employees Retirement System and to become a member of the retirement system and pension system of the City of Jacksonville by filing a written notice of election with the trustees of the pension funds of the retirement and pension systems concerned.
- (c) Excluding those employed in fire & rescue and law enforcement, any person previously employed by the Jacksonville Port Authority and employed by the Jacksonville Seaport Authority or Jacksonville Airport Authority on October 1, 2001, who was a member of the State and County Officers and Employees Retirement System provided for in Chapter 122, Florida Statutes, at the time of such employment, shall not be required to become a member of the general employees retirement and pension system of the City of Jacksonville, but, on a one-time basis, may elect to discontinue membership in the State and County Officers and Employees Retirement System and to become a member of the general employees retirement system and pension system of the City of Jacksonville by filing (no later than November 1, 2001) a written notice of such election with the trustees of said pension fund. Likewise, any person employed by the Jacksonville Seaport Authority or Jacksonville Airport Authority (and not previously employed, as of September 30, 2001, by the Jacksonville Port Authority) on or after October 1, 2001, who otherwise meets eligibility requirements, shall be required to become a member of the retirement and pension system of the City of Jacksonville, subject to the limitations contained in the



next sentence. Provided, however, any person who became employed by either the Jacksonville Seaport Authority or the Jacksonville Airport Authority on or after April 1, 2002, or who hereafter becomes so employed, shall be ineligible to become a member of the 1937 General Employees Pension Plan, and instead must join the Florida Retirement System; and provided further, anything above in this subsection to the contrary notwithstanding, that any person who became employed by either the Seaport Authority or the Airport Authority between October 1, 2001 and March 31, 2002 and joined the fund as required under Ordinance 2001-838-E, shall have a one-time option, as described further in Section 120.105(e) of the Jacksonville Municipal Code, to elect within a 60-day period to cease being a member of the fund and to join the FRS. Credited service under the general employees retirement and pension system of the City of Jacksonville shall commence for all Jacksonville Seaport Authority or Jacksonville Airport Authority employees on October 1, 2001 or their date of employment (whichever is later), for those employees who elected to join that plan prior to November 1, 2001 or who became employed prior to April 1, 2002, and no employment service prior to October 1, 2001 with the Jacksonville Port Authority may be credited or otherwise eligible for service purchase under the general employees retirement and pension system of the City of Jacksonville.

- (d) Any member of a retirement and pension system of the City of a former government who subsequent to being made a member of said system is employed to fill a position which is not in the civil service system of the City may elect in writing to terminate his membership in said retirement and pension system to be effective no earlier than the date such written election is filed with the trustees of said retirement and pension system and thereupon being entitled to receive the applicable refund, if any. However, any employee electing to withdraw from said retirement or pension system shall not be granted any credit for prior periods of service for the purpose of pension benefits in the system from which he has withdrawn his membership.
- (e) A handicapped person shall be eligible to participate in any retirement and pension plans described in this article. However, said handicapped person, who shall be defined as having any disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy, shall be examined by a panel of two or more medical physicians, who are specialists in the handicapped applicant's particular disability. The examination shall be conducted through the Division of Vocational Rehabilitation of the Department of Health and Rehabilitative Services and paid for by same. The panel shall determine the applicant's ability to perform the duties required pertaining to the applied position for a period of time not less than that required to obtain minimum time service benefits with the City of Jacksonville. The handicapped applicant shall be considered on the same basis as any other applicant without discrimination or prejudice. If the handicapped applicant, in the opinion of the medical panel aforementioned, could not logically be expected to carry out the requirements of the applied for position for a period of time not less than that required to obtain minimum time service benefits, he may be employed under the old age and survivors insurance provisions, and shall not be required to be a member of said retirement and pension system of the City of Jacksonville.
- (f) No handicapped applicant shall be entitled to benefits under the retirement and pension system due to a disability arising out of the handicapped applicant's existing condition either directly or indirectly, which condition existed at the time the handicapped applicant became a member of the retirement and pension system. However, any contributions paid by the handicapped employee into the retirement and pension fund shall be refunded to said employee if the employee becomes disabled.
- (g) Any employee of the City of Jacksonville on or before June 30, 2004, who is a member of

the general employees retirement and pension system of the City of Jacksonville and becomes employed by the First Coast Metropolitan Planning Organization on or before July 1, 2004, may elect to remain a member of the general employees retirement and pension system of the City of Jacksonville by filing a written notice of election with the trustees of the general employees retirement and pension system of the City of Jacksonville not later than July 1, 2004. The First Coast Metropolitan Planning Organization shall make all appropriate employer contributions.

(Laws of Fla., Ch. 69-117; Laws of Fla., Ch. 73-510; Laws of Fla., Ch. 74-514; Ord. 84-1307-754, § 14; Laws of Fla., Ch. 92-341, § 1; Ord. 2001-838-E, § 2; Ord. 2002-971-E, § 2; Laws of Fla., Ch. 2004-429, § 1)

### **Section 16.05. Police and correctional officers; special provisions relative to disability.**

- (1) Any condition or impairment of health of any police or correctional officer caused by heart disease or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such police or correctional officer shall have successfully passed a physical examination upon entering into any such service as a police or correctional officer, which examination failed to reveal any evidence of any such condition. Such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.
- (2) This section shall be construed to authorize the City of Jacksonville to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that any condition or impairment of health of any police or correctional officer caused by heart disease or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.
- (3) The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems which provide fair and adequate benefits and which are managed, administered, and funded in an actuarially sound manner as required by s. 14, Art. X of the State Constitution and part VII of chapter 112 of the Florida Statutes. Therefore, the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.
- (4) To fund the provisions of this act, the Board of Trustees of the Police Officer and Firefighter Pension Fund is directed to obtain an actuarial impact statement and file it with the City Council. Upon receipt of this impact statement, the council shall determine any change in contributions which will be required to fund this additional benefit, effective January 1, 1993. Any increased cost required to fund any additional pension benefit or any benefit arising from a worker's compensation claim relating to the presumption created in subsection (1) shall be paid solely from contributions of the affected police and correctional officers. Said increases shall be in addition to all other changes to such contribution rates which may be enacted into law to take effect on said date.

(Laws of Fla., Ch. 92-341, § 1; Laws of Fla., Ch. 93-356, § 1)

### **Section 16.06. Funding and enhanced pension benefits for correctional officers.**

- (1) There is hereby created within the 1937 General Employees Pension Fund of the City of

Jacksonville a separate Correctional Officers Pension Fund for all correctional officers employed by the City of Jacksonville on the effective date of this act and for those to be hired in the future. All assets and accrued benefits, employee contributions, and employer contributions, including interest, for all affected correctional officers in the 1937 Pension Fund for the Employees of the City of Jacksonville shall be transferred to the Correctional Officers Pension Fund, which shall be administered separately by the Board of Pension Trustees administering the 1937 General Employees Pension Fund, except that a separate three-member Correctional Officers Advisory Committee shall be established to perform the same functions for this fund as are performed by the General Employees Pension Advisory Committee. The chair of the Correctional Officers Advisory Committee shall serve on the Board of Pension Trustees for all matters directly related to the Correctional Officers Pension Fund in lieu of the chair of the General Employees Advisory Committee. The City Council of the City of Jacksonville shall be responsible for implementing this act and for establishing benefits for participants in the Correctional Officers Pension Fund. The benefits for current participants and future retirees of the Correctional Officers Pension Fund shall be identical to those presently provided to participants and retirees in the 1937 General Employees Pension Fund, subject to those improvements deemed necessary by the city council to address inadequacies in current benefits and funding.

- (2) In support of remediating the cost of housing, boarding, and caring for detainees held in the City of Jacksonville's pretrial and posttrial detention facilities by providing separate and additional funds for the enhancement of pension benefits of the correctional officers of the City of Jacksonville, Office of the Sheriff, each person who is arrested and booked into a consolidated City of Jacksonville corrections facility shall pay an administrative surcharge of \$20, which sum shall be deposited into the City of Jacksonville's Correctional Officers Pension Fund. Such surcharge funds shall be accounted for separately and used only to supplement the pension benefits for those members who are classified as correctional officers of the City of Jacksonville, Office of the Sheriff, and are members of said fund. The city shall provide procedures for refunds or waivers of the administrative surcharge for those detainees:
- (a) Against whom charges are dropped or not pursued;
  - (b) Who are acquitted of the charges;
  - (c) Who are unable to pay due to indigency; or
  - (d) Who demonstrate a legal basis for relief from such payment.

No detainee shall be subject to continued detention, be denied access to judicial process or legal counsel, or be subject to penalty solely because of nonpayment of the administrative surcharge.

(Laws of Fla., Ch. 2004-411, § 1)

**Jacksonville, Florida, Code of Ordinances >> - CHARTER AND RELATED LAWS >> PART A - CHARTER LAWS CHARTER OF THE CITY OF JACKSONVILLE, FLORIDA >> ARTICLE 22. JACKSONVILLE POLICE AND FIRE PENSION BOARD OF TRUSTEES >>**

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**ARTICLE 22. JACKSONVILLE POLICE AND FIRE PENSION BOARD OF TRUSTEES**

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Section 22.01. Creation.

Section 22.02. Membership.

Section 22.03. Definitions.

Section 22.04. General powers.

Section 22.05. Liability of the board.

Section 22.06. Named fiduciaries.

Section 22.07. Amendatory power.

Section 22.08. Applicability of state law.

Section 22.09. Rights of former city employees preserved.

Section 22.10. Declaration of purposes.

Section 22.11. Jacksonville Police and Fire Pension Board continuity.

**Section 22.01. Creation.**

There is hereby created and established a body politic and corporate to be known as the Jacksonville Police and Fire Pension Board of Trustees, which is hereby authorized to exercise its jurisdiction, powers, and duties within the territorial limits of Duval County.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

**Section 22.02. Membership.**

- (a) The membership of the Jacksonville Police and Fire Pension Board of Trustees shall consist of five members, of whom two shall be legal residents of the City of Jacksonville appointed by the city council; one shall be a police officer elected by a majority vote of the police officers who are members of the pension fund, one shall be a firefighter elected by a majority of the firefighters who are members of the pension fund, and the last shall be chosen by a majority of the previous four members. The fifth member's name shall be submitted to the City Council, which shall, as a ministerial act, appoint such person as the fifth member of the board. Effective for all new appointments after July 1, 2005, each resident member shall serve as a trustee for a period of 4 years, unless sooner replaced by the City Council at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee. Effective for all elections after July 1, 2005, the police officer and firefighter members shall serve as trustees for a period of 4 years, unless they shall sooner leave the employment of the city as a police officer or firefighter, whereupon the class of employees whose elected representative has left office shall elect a successor to fill the unexpired term of office as provided for in this section. Each employee member may succeed himself or herself in office. Effective for all new appointments after July 1, 2005, the fifth member shall serve a term of 4 years and may succeed himself or herself in office. Members shall continue to serve until their respective successors are appointed, elected, or selected.
- (b) The board shall elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, and hearings of the board. Board members

shall not receive any compensation as such, but may receive expenses and per diem as provided by law. Three members of the board shall constitute a quorum, but at least three members of the board must approve any action to be taken by the board. Each member of the board shall have one vote. The board shall meet at such times and places designated by it, but shall hold regular meetings at least quarterly. Special meetings may be called by the chairman or any three members of the board.

- (c) The treasurer of the city shall be the treasurer of the fund.
- (d) The provisions of chapters 175 and 185, Florida Statutes, the provisions of s. 286.012, Florida Statutes, and the provisions of ss. 112.311—112.3175 and chapter 112, part VII, Florida Statutes, and as the same may be amended in the future, shall apply to each member of the board. The board shall have the authority to invest and reinvest the assets of the plan without regard to any limitation in chapters 175 and 185, Florida Statutes, and shall be bound by the provisions of chapter 112, part VII, Florida Statutes, and the applicable provisions of s. 215.47, Florida Statutes. Prior to the adoption of any change in asset allocation or the introduction of a new asset class, the board shall give written notice of the meeting at which the proposed change shall be considered to the City Council Finance Committee.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1; Laws of Fla., Ch. 2005-330, § 1)

### **Section 22.03. Definitions.**

As used in this article, the following words and terms shall have the following meanings, unless the context otherwise requires:

- (a) "Board" or "board of trustees" means the body politic and corporate created by this article.
- (b) "County" means the County of Duval.
- (c) "City" means the City of Jacksonville.
- (d) "Pension plan" or "pension fund" refers to the Jacksonville Police and Fire Pension Fund as created by chapter 18615, Laws of Florida, 1937.
- (e) The "council" means the council of the City of Jacksonville.
- (f) Words importing the singular number include the plural number in each case and vice versa, and words importing persons include firms and corporations.
- (g) Words indicating the masculine mean both the masculine and feminine.

(Laws of Fla., Ch. 90-442, § 2)

### **Section 22.04. General powers.**

The board shall have the power to:

- (a) Be the sole entity responsible for administering the Jacksonville Police and Fire Pension Fund.
- (b) Invest and reinvest the assets of the pension fund in:
  - (1) Any lawful investment as provided in applicable provisions of s. 215.47, Florida Statutes, provided the investment is permitted in the written investment policy adopted by the board as provided in chapter 112, part VII, Florida Statutes.
  - (2) Notwithstanding anything to the contrary in the applicable provisions of s. 215.47, Florida Statutes, investments in fixed real estate assets, not to exceed 20 percent of the assets of the plan, at cost.
  - (3) Investment plan.

- (i) In making investments for the plan, the board shall make no investment after June 30, 1996, which is not in conformance with the plan's investment plan. The investment plan must include, among other items: the investment objectives; permitted types of securities in which the board may not invest; the criteria to measure annual investment performance; and any other applicable criteria established by the board.
  - (ii) The investment plan shall be developed by the plan administrator and shall be approved by the board. Upon adoption by the board, the investment plan and any amendments shall be promptly filed with the Division of Retirement, and the plan's sponsor and plan actuary.
  - (iii) The effective date of the investment plan shall be the 31st calendar day following the filing date with the plan sponsor. Investments permitted by the investment plan shall not be made prior to the effective date of the investment plan.
  - (iv) The investment plan may be amended at any time subject to paragraphs (ii) and (iii).
  - (v) For each illiquid investment (an investment for which a generally recognized market is not available or for which there is no consistent or generally accepted pricing mechanism) the investment plan shall: include the criteria set forth in s. 215.47(6), Florida Statutes; require a statement as to the additional expected yield anticipated to compensate the plan for the additional risk of such investment which additional yield is not available from an investment for which there is a generally recognized market; require the board to verify the determination of the fair market value for each such investment as of each date as of which an actuarial valuation is prepared and that the determination complies with all applicable state and federal requirements; and require the board to disclose to the Division of Retirement and the plan's sponsor each such investment as of each date as of which an actuarial valuation is prepared for which the fair market value is not provided.
  - (vi) Immediately prior to the date as of which each actuarial valuation is prepared, the board shall determine the total expected annual rate of return for the plan's assets for the year beginning with the date as of which the actuarial valuation is prepared, for each of the next several years and for the long-term thereafter. This determination shall be promptly filed with the Division of Retirement, and the plan's sponsor and plan actuary.
- (c) Sue and be sued, implead and be impleaded, and complain and defend in all courts.
  - (d) Enter into contracts, leases, or other transactions.
  - (e) Employ and fix the compensation of an administrator and any consultants, attorneys, actuaries, accountants, and other employees or contractors as the board may require.
  - (f) Delegate to one or more of its agents or employees such of its powers as it may deem necessary to carry out the purposes of this article, subject always to the supervision and control of the board.
  - (g) Determine all facts with regard to any participant's age, normal retirement date, disability, amount of compensation, length of service and credited service, and date of initial coverage under the pension plan, and, by application of the facts so determined and any other facts deemed material, determine a participant's amount of benefit.
  - (h) Make rules and regulations for the administration of the pension plan which are not inconsistent with the terms and provisions of law.

- (i) Construe all terms, provisions, conditions, and limitations of the pension plan; and its construction thereof, made in good faith, shall be final and conclusive upon the interested parties.
- (j) Correct any defect or supply any omission or reconcile any inconsistency that may appear in the pension fund and make any equitable adjustments for any mistakes or errors made in the administration of the pension.
- (k) Determine all questions relating to the administration of the pension fund in order to promote the uniform administration of the pension fund and to effectuate its purposes and provisions.
- (l) Authorize and direct the payment from the pension fund of all expenses and fees incurred in the administration of the pension fund.
- (m) Require such information as may be necessary for the proper operation of the system from any participant, beneficiary, or officer, department head, or other person or persons in authority, as the case may be, of any employer.
- (n) Cause a general investigation to be made by a competent actuary and at least once every 3 years or as required by law thereafter of the retirement, disability, separation, mortality, interest, and employee earning rates; recommended, as a result of such investigation, the tables to be adopted for all required actuarial calculations; cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. A copy of this actuarial study shall be furnished to the city council by the board immediately upon its receipt.
- (o) Cause an audit of the affairs of the pension plan to be made annually by an independent certified public accountant, and submit a copy thereof to all interested parties as soon as possible after the end of the fiscal year.
- (p) Issue subpoenas to compel the attendance of witnesses and the production of books, papers, and records pertinent to any investigation or hearing concerning any application for membership or benefits, and to administer oaths to witnesses.

The foregoing list of expressed powers is not intended to be either complete or exclusive, and the board shall, in addition, have all such powers as it may reasonably determine to be necessary or appropriate to the performance of its duties under the retirement system. Any decision or judgment of the board in good faith on any questions arising hereunder in connection with the exercise of its powers shall be final, binding, and conclusive upon all parties concerned.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1; Laws of Fla., Ch. 94-466, § 1; Laws of Fla., Ch. 96-528, § 1; Laws of Fla., Ch. 2005-330, § 1; Laws of Fla., Ch. 2009-255, § 1)

### **Section 22.05. Liability of the board.**

- (a) Each member of the board shall discharge his duties solely in the interest of the participants and beneficiaries of the Jacksonville Police and Fire Pension Fund for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan and shall exercise such care and diligence as is necessary to accomplish this purpose according to the provisions of s. 112.656, Florida Statutes.
- (b) No board member shall be personally liable upon or with respect to any agreement, act, transaction, or omission executed, committed, or suffered to be committed by himself as a member of the board or by any other board member or agent, representative, or employee of the board. Moreover, the board and any member or agent thereof shall be fully protected when relying upon the advice of any attorney employed by the board insofar as legal matters are

concerned, any accountant employed by the board insofar as accounting matters are concerned, any actuary employed by the board insofar as actuarial matters are concerned, and any investment manager employed by the board insofar as investment matters are concerned.

- (c) The board shall have the power to purchase liability insurance to cover errors and omissions, provided such insurance shall be with recourse.
- (d) The board may, in its discretion, provide life and/or accidental death and disability insurance to the trustees and employees of the board to ensure against risks incurred while in the service of the pension fund.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

### **Section 22.06. Named fiduciaries.**

The named fiduciaries with respect to the City of Jacksonville Police and Fire Pension Fund are the plan administrator, and any officer, trustee, and custodian, and any counsel, accountant, and actuary of the retirement system or plan who is employed on a full time basis, or any other person or entity who is a fiduciary according to law shall be included as fiduciaries of such system or plan.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

### **Section 22.07. Amendatory power.**

- (a) The board of trustees shall have the sole and exclusive responsibility of administering the pension plan, but nothing herein shall empower the board to amend the provisions of the pension plan without the approval of the Jacksonville City Council.
- (b) No legislation shall be adopted by the Jacksonville City Council altering the terms of the pension fund without said legislation having first been referred to the board for its consideration and comment. The board may, as it deems necessary, recommend legislative changes and pass those recommendations on to the Jacksonville City Council for their consideration as ordinances.
- (c) The benefit plan administered by the board shall be as established by ordinance or charter provision, or by special act or general law of the Legislature, which shall be incorporated in this article by reference.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

### **Section 22.08. Applicability of state law.**

Except as otherwise provided herein, the board shall be bound in its actions by the applicable provisions of:

- (a) Chapter 185, Florida Statutes, as amended.
- (b) Chapter 175, Florida Statutes, as amended.
- (c) Section 14, Article X of the State Constitution.
- (d) Chapter 112, part VII, Florida Statutes, as amended.
- (e) Section 215.47, Florida Statutes, as amended.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1; Laws of Fla., Ch. 2005-330, § 1)

### **Section 22.09. Rights of former city employees preserved.**

- (a) Any person in the classified civil service of the City of Jacksonville who is appointed to a position in the employ of the board shall be deemed an unclassified employee while in the service of the



board and shall serve at the pleasure of the board.

- (b) Any such person shall, however, retain his civil service status and be entitled to return to the same civil service classification, rights, status, and job value as held at the time of such appointment.
- (c) Any person employed by the board shall be subject to such terms and conditions as shall be set by the board.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

### **Section 22.10. Declaration of purposes.**

The board created by this article and the purposes for which it is intended to serve are hereby found to be for a public purpose. The board shall be considered a governmental unit responsible for the management of an irrevocable trust as that term is used in s. 112.66(8), Florida Statutes.

(Laws of Fla., Ch. 90-442, § 2; Laws of Fla., Ch. 92-341, § 1)

### **Section 22.11. Jacksonville Police and Fire Pension Board continuity.**

All provisions of law in conflict with this article are repealed, except to the extent necessary to give effect to employee rights and benefits preserved as provided in this article. The Jacksonville Police and Fire Pension Board shall continue as an independent agency under the Charter of the City of Jacksonville, without any break in its continuity solely because of the adoption of this article. The members of the board in office on the effective date of this article shall continue in office for the remainder of their respective terms and until their successors shall be appointed as provided in this article.

(Laws of Fla., Ch. 92-341, § 1)

**APPENDIX 4**

**ATTORNEY GENERAL OPINION**

**2003 - 46**

Fla. AGO 2003-46 (Fla.A.G.), 2003 WL 22513556

Office of the Attorney General

State of Florida

AGO 2003-46

November 3, 2003

**RE: CONSOLIDATED GOVERNMENT-COUNTIES-CHARTERS-RETIREMENT-participation in state retirement system by officers of consolidated government. S. 121.052, Fla. Stat.; Chs. 67-1320 and 92-341, Laws of Florida.**

\*1 Mr. Robert D. Klausner  
10059 Northwest 1st Court  
Plantation, Florida 33324

Dear Mr. Klausner:

On behalf of the Mayor, Sheriff, Clerk of Courts, Tax Collector, Property Appraiser, and Supervisor of Elections of the Consolidated Government of the City of Jacksonville, you ask the following questions:

1. Is the Mayor of the Consolidated City of Jacksonville eligible for membership in the Elected Officers' Class of the Florida Retirement System under section 121.052(2)(d), Florida Statutes?

2. Are the Sheriff, Clerk of Courts, Tax Collector, Property Appraiser, and Supervisor of Elections eligible for membership in the Elected Officers' Class of the Florida Retirement System under section 121.052(2)(d), Florida Statutes?

As your questions are interrelated, they will be answered together. The Division of Retirement of the Department of Management Services, which is charged with the administration of Chapter 121, Florida Statutes, has advised this office that it acquiesces in the request for an Attorney General's Opinion.

Section 121.052(2), Florida Statutes, provides for membership in the Elected Officers' Class of the Florida Retirement System. Paragraph (d) of the statute lists:

“Any constitutional county elected officer assuming office on or after July 1, 1981, including any sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioner, school board member, or elected school board superintendent, or any elected officer of any entity with countywide jurisdiction assuming office on or after July 1, 1981, who, pursuant to general or special law, exercises powers and duties that, but for such general or special law, would be exercised by any of the constitutional county elected officers set forth in this paragraph, including the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction unless such sheriff or clerk elected to continue to participate in a local retirement system.”<sup>1</sup>

In considering your inquiry, a review of the history surrounding the enactment of the above provision appears to be helpful in determining the intent of the Legislature. In 1981, section 121.052, Florida Statutes, was amended to provide that on or after July 1, 1981, any county elected officer was authorized to participate in the Florida Retirement System's Elected State Officers' Class.<sup>2</sup> Subsequently, in 1986, the statute was amended to provide:

On or after July 1, 1981, participation in the Elected State Officers' Class shall be optional within the time provided herein for any constitutional county elected officer, including any sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioner, school board member, or elected school board superintendent. In addition, any elected officer of any entity with county wide

jurisdiction who, pursuant to general or special law, exercises power and duties that, but for said general or special law would be exercised by any of the aforementioned constitutional county elected officers, shall also be eligible for membership in the Elected State Officers' Class....<sup>3</sup>

\*2 This statute was amended again in 2002 to specifically authorize participation in the Elected State Officers' Class by the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction, unless such sheriff or clerk elects to participate in the local retirement system.<sup>4</sup>

Article VIII, section 9, Florida Constitution 1885, which was carried forward in full force and effect by Article VIII, section 6(e), Florida Constitution, authorized the Legislature to establish a municipal corporation to be known as the City of Jacksonville. Pursuant to such authority, the Legislature enacted Chapter 67-1320, Laws of Florida, creating the consolidated City of Jacksonville. The Florida Supreme Court in *Jackson v. Consolidated Government of City of Jacksonville*,<sup>5</sup> quoting the trial court, stated:

“The Jacksonville Consolidation Amendment is a special provision applying only to Duval County and giving the legislature power at any time to consolidate the county and the cities within it into a municipality.”

In 1976, the Florida Supreme Court considered the nature of the office of the mayor of the consolidated government of the City of Jacksonville in determining whether the Governor had the constitutional authority to suspend such officer as a municipal officer or as a county officer. In *In re Advisory Opinion to the Governor Request of July 12, 1976*,<sup>6</sup> the Florida Supreme Court held that the mayor was a county officer subject to the Governor's suspension power under Article IV, section 7(a), Florida Constitution, and section 112.49, Florida Statutes. The Court stated that by enacting section 112.49, the Legislature had recognized the unique nature of consolidated governments and the fact that some officials of such governments function as both county and municipal officials. Section 112.49 provides that in such governments, any officer of such merged government who exercises the powers and duties of a county officer shall be deemed a county officer subject to suspension by the Governor. In addition, the Court stated that an examination of the Jacksonville charter leads to the conclusion that the mayor of the consolidated City of Jacksonville is a county officer subject to gubernatorial suspension.

The 1992 readoption of the Jacksonville charter in Chapter 92-341, Laws of Florida, recognizes that the consolidated government serves as both a municipal and a county government.<sup>7</sup> In addition, section 6.02 of Chapter 92-341 states that the mayor is a constitutional elected officer for purposes of Article II, section 8, Florida Constitution, the Ethics in Government provision.

As noted above, section 121.052(2)(d), Florida Statutes, extends participation in the Florida Retirement System's Elected Officers' Class to constitutional elected officers or to any elected officer of any entity with countywide jurisdiction who, pursuant to general or special law, exercises powers and duties that, but for the general or special act, would have been exercised by any of the county constitutional officers enumerated therein. The mayor, sheriff, clerk of courts, tax collector, property appraiser and supervisor of elections would appear to qualify under the above statutory provision, if not as constitutional county elected officers, then as elected officers of an entity with countywide jurisdiction. The sheriff, clerk, tax collector, property appraiser and supervisor all appear to be exercising powers of those offices established by the Constitution while the mayor would appear to exercise some of the authority that, but for the charter, would normally be exercised by a board of county commissioners.<sup>8</sup>

\*3 Thus, in the absence of contrary authority, these officers would appear to be entitled to participate in the Elected State Officers' Class for retirement in the Florida Retirement System. I note, however, the charter for the consolidated government of the City of Jacksonville provides:

“All officers and employees of the consolidated government employed after the effective date of the charter shall be members of the 1937 police and fire department pension fund of the City of Jacksonville, under the provisions of chapter 18615, Acts of 1937, as amended, or the 1937 pension fund for employees of the City of Jacksonville, under the provisions of chapter 18610, Acts of 1937, as amended, and such system shall be the retirement and pension for the consolidated government...”<sup>9</sup>

While it appears the mayor and other county officers would be eligible for Florida Retirement System participation under section 121.052(2)(d), Florida Statutes, the charter for the consolidated government of the City of Jacksonville clearly provides that *all* officers of the consolidated government shall be members of the city's pension fund. Section 16.04(a) of the Charter, however, provides a limited exception to section 16.01:

Notwithstanding the provisions of section 16.01 [of the charter]:

“(a) Any employee of the City of Jacksonville who is not in the civil service system of the city nor any elected or appointed officer of the city shall be required to become a member of the retirement and pension system of the City of Jacksonville, but any noncivil service employee or elected or appointed officer may elect to become a member of the retirement and pension system of the City of Jacksonville by filing a written notice of election with the trustees of the pension funds of the city retirement and pension system. Upon the filing of the notice of election, the membership of the officer or employee in any other public pension fund of which he may be a member shall terminate.”

While the above provision does not require an officer of the consolidated government of the City of Jacksonville to become a member of the city retirement and pension system but rather allows such officers to elect to participate in such city retirement and pension plans, it is silent as to whether such officers may opt out of the city plan once they have elected to participate. This office, however, has generally deferred to the local government regarding the interpretation of its charter.

I would further note that in 2002, the Florida Legislature specifically amended section 121.052(2)(d), Florida Statutes, to permit the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction to participate in the Florida Retirement System's Elected Officers' Class unless such officers elect to continue to participate in their local retirement system. As the sole consolidated government with countywide jurisdiction in Florida,<sup>10</sup> the consolidated government of the City of Jacksonville would appear to be subject to the provisions of the 2002 amendment authorizing the sheriff and clerk to participate in the state retirement system.<sup>11</sup>

\*4 Accordingly, I am of the opinion that section 121.052(2)(d), Florida Statutes, authorizes the mayor, property appraiser, tax collector, supervisor of elections, sheriff, and clerk of the court to participate in the Florida State Retirement System's Elected Officers' Class. The Charter for the Consolidated Government of the City of Jacksonville allows such officers to elect participation in Jacksonville's city retirement and pension system or the state retirement system. The sheriff and the clerk of the court, however, have been authorized by section 121.052(2)(d), Florida Statutes, to elect to continue to participate in the city's plan or to elect coverage under the Florida Retirement System's Elected Officers' Class.<sup>12</sup>

Sincerely,

Charlie Crist  
Attorney General

#### Footnotes

- 1 See, Art. VIII, s. 1(d), Fla. Const., listing county officers as “a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court”; and Art. VIII, s. 1(e), Fla. Const., providing for the board of county commissioners to be the governing body of the county except when otherwise provided by county charter.
- 2 See, s. 2, Ch. 81-214, Laws of Fla., creating s. 121.052(1)(g), Fla. Stat. 1981.

- 3 Section 8, Ch. 86-180, Laws of Fla.  
4 Section 4, Ch. 02-273, Laws of Fla.  
5 225 So. 2d 497 (Fla. 1969).  
6 336 So. 2d 97 (Fla. 1976).  
7 Sections 1.01(a) and (b), Ch. 92-341, Laws of Florida. *And see*, s. 18.02, Ch. 92-341, Laws of Fla., stating that for purposes of general law, the consolidated government constitutes a county and a municipality.  
8 *See, e.g.*, s. 8.01, Ch. 92-341, Laws of Fla., stating that the sheriff shall be responsible for the performance of duties imposed on the sheriff of Duval County by the Constitution or by the general or special laws of the state; s. 12.06, Ch. 92-341, *supra*, stating that the office of the clerk of the circuit and county court shall continue and all general and special laws not in conflict continue in full force; s. 10.01, Ch. 92-341, *supra*, stating that the property appraiser is responsible for assessing all real and personal property in Duval County and shall perform all duties imposed by general or special law on the property appraiser of Duval County; s. 11.01, Ch. 92-341, *supra*, stating that the tax collector shall be responsible for the collection of all taxes, fees, service charges and other revenues due the consolidated government and shall perform all duties imposed by general or special law on the tax collector of Duval County; and s. 9.01, Ch. 92-341, *supra*, stating that the supervisor of elections shall be responsible for maintaining the rolls of qualified voters of the consolidated government and for conducting elections and shall perform all duties imposed by general or special law on the supervisor for Duval County. *And see*, s. 6.04, Ch. 92-341, *supra*, stating:  
“The executive power of the consolidated government... is vested in the mayor who is the chief executive and administrative officer of the consolidated government. He shall be responsible for the conduct of the executive and administrative departments of the consolidated government. The mayor shall administer, supervise, and control all departments and divisions created by this charter and all departments and divisions created by the council...”  
*See also*, s. 4.02, Ch. 92-341, *supra*, stating that all powers and duties of the consolidated government that are legislative in nature shall be exercised by the council while all powers and duties of the consolidated government that are executive in nature shall be exercised by the mayor or his designee.  
9 *See*, s. 18.01, Ch. 67-1320, Laws of Fla., and s. 16.01, Ch. 92-341, Laws of Fla.  
10 *See*, Morris, *The Florida Handbook*, 2002-2003 edition, p. 238.  
11 *See, e.g.*, *Ervin v. Peninsular Telephone Company*, 53 So. 2d 647 (Fla. 1951) (Supreme Court has duty in construction of statutes to ascertain Legislature's intention and effectuate it); *State v. Webb*, 398 So. 2d 820 (Fla. 1981) (legislative intent is the polestar by which the courts must be guided).  
12 I would note that s. 121.052(5)(d), Fla. Stat., was amended in 1999, to allow an existing member of the Florida Retirement System who serves as the elected mayor of a consolidated government, which by its charter has chosen status as a municipality, to elect membership in the Florida Retirement System's Elected Officers' Class for the duration of the term of office. *See*, s. 33, Ch. 99-255, Laws of Fla.

Fla. AGO 2003-46 (Fla.A.G.), 2003 WL 22513556

## **APPENDIX 5**

### **STEVE ROHAN OPINION**

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
1300 City Hall  
Jacksonville, FL 32202  
(904) 630-1700

MEMORANDUM

TO: Board of Trustees, General Employees Pension Plan

FROM: Steven E. Rohan, Deputy General Counsel

*Steven E. Rohan*

RE: Police & Fire Pension Fund Employees

DATE: December 16, 1996

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Our office has been requested to opine on a subject which leads to two critical questions:

- (a) May a retiree of the city work for the Police and Fire Pension Fund without renouncing retirement benefits and making contributions to the City's pension plan? and
- (b) May a city employee who is hired by the Police and Fire Pension Fund continue building pension service through continued pension contributions.

FACTUAL BACKGROUND

The pertinent facts are as follows:

(i) On February 9, 1996, Lewis Caton moved from employment with the City to employment with the Police and Fire Pension Plan. There was no interruption in membership in the General Employees Pension Plan.

(ii) On September 21, 1996, Ona Davis moved from employment with the City to employment with the Police and Fire Pension Fund. There was no interruption in membership in the General Employees Pension Plan.

(iii) On September 7, 1996, Robert Glover retired from employment with the City



and began to receive a pension as a beneficiary of the General Employees Pension Plan. On November 8, 1996 he became an employee of Police and Fire Pension Fund.

### **APPLICABLE LAW**

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Applicable provisions of the Charter and Ordinance Code are as follows:

(1) Section 22.09 of Charter article 22 which established the Police and Fire Pension Fund as an independent authority:

**Section 22.09. Rights of former city employees preserved.-**

(a) Any person in the classified civil service of the City of Jacksonville who is appointed to a position in the employ of the board shall be deemed an unclassified employee while in the service of the board and shall serve at the pleasure of the board.

(b) Any such person shall, however, retain his civil service status and be entitled to return to the same civil service classification rights, status, and job value as held at the time of such appointment.

(c) Any person employed by the board shall be subject to such terms and conditions as shall be set by the board.

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(2) Section 120.205 Ordinance Code which states as to calculations:

**120.205 Calculations of pension contributions for the General Employees Pension Plan. ...**

(a) ... Whenever an employing agency other than the city pays the salaries or wages of the employee-members of the fund, the employing agency shall make the foregoing deductions and contributions.

- (3) Section 120.207 Ordinance Code which states as to reemployment:

**120.207 Pensioner's rights upon reemployment by either the city or the Jacksonville Housing Authority (JHA)**

(a)... any pensioner ... who is retired or elects to retire ... who ... is thereafter reemployed by the city or JHA shall cease to receive his pension ... . The pensioner ... upon reemployment shall be required to join the pension fund and make the required contribution payments into the fund.

- (4) Section 2.102 Ordinance Code which supplies rules of construction:

**2.102 Rules of Construction.** In the construction of this Code and all ordinances, unless the context clearly requires otherwise:

(a) *Agency or agency of the city* means any unit of the Consolidated Government established by the Charter or created by ordinance and empowered to act on behalf of the City.

(b) *City* means the City of Jacksonville, Florida.

**SHORT ANSWERS**

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- (a) The pension of a city retiree/pensioner hired by the Police & Fire Pension Fund, an independent agency of the city, does not cease upon employment with the Police & Fire Pension Fund.
- (b) According to the Personnel Division's interpretation of Section 22.09 of the Charter, former city employees serving in the classified service who are hired by the Police & Fire Pension Fund directly from the classified service, are entitled to participate in the General Employees' Pension Fund. This interpretation is not unreasonable or clearly erroneous.

**ANALYSIS**

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(a)

**The pension of a city retiree/pensioner hired by the Police & Fire Pension Fund, an independent agency of the city, does not cease upon employment with the Police & Fire Pension Fund.**

The Police & Fire Pension Fund is an independent authority created by the state legislature and codified in Chapter 22 of the Charter. The Police & Fire Pension Fund is not the "city" as defined by Section 2.102 Ordinance Code, but is indisputably an independent "agency."

The prohibition against receiving retirement benefits upon reemployment is limited by Section 120.207 Ordinance Code to reemployment with the "city" and to reemployment with the independent agency known as the Jacksonville Housing Authority which was empowered by ordinance to act on behalf of the city. One of the basic principles of statutory construction is that where the legislature has carefully employed a term in one section of a statute, but omits it in another section of the same act, it should not be implied where it is excluded. Similarly, where legislation includes something specific, it follows that all that is not included is in fact excluded. The Police & Fire Pension Fund is not included in Section 120.207's prohibitions and thus is excluded. Therefore, a retiree of the city may work for the Police and Fire Pension Fund without forfeiting retirement benefits. A retiree would not, however, be able to elect reemployment with the Police and Fire Pension Fund and a return to contributing status for the intended purpose or consequential result of enhancing the employee's retirement benefit. That can only be accomplished through "city" reemployment.

(b)

**According to the Personnel Division's interpretation of Section 22.09 of the Charter, former city employees in the classified service who are hired by the Police & Fire Pension Fund directly from the classified service, are entitled to participate in the General Employees' Pension Fund.**

The second question is a much more difficult one to answer but is not without

solution.

At issue is whether employees of the Police & Fire Pension Fund who were hired from the City classified pool may participate and continue to build service credits in the City's pension plans.

The answer appears to be in the affirmative given the City's willingness to allow several employees to serve as employees of the Police & Fire Pension Fund since its inception, while at the same time allowing them to continue to build service in the General Employees' Pension Fund. While there is no express prohibition of this policy, there is no express authorization either. The authorization for this policy can, however, be reasonably implied. Section 22.09 of the Charter expressly states that transferring city civil servants "shall be deemed an unclassified employee while in the service of the board." This expression in the Charter is different from that found in other independent agency transferring legislation which usually expressly recognizes these employees as city employees or expressly prohibits their consideration as city employees.

The designation of each transferring employee as an "unclassified employee" implies the retention of some city rights, since the "unclassified" terminology constitutes a term of art in the city's personnel structure and implies appointed city status. Since both the city and the Police & Fire Pension Fund have opted to grant city pension status to the transferees, and the Police & Fire Pension Fund has paid contributions into the city's general pension fund, and the city's general pension fund has accepted these contributions, the logical conclusion is that absent a legislative prohibition, transferring classified employees from the city to the Police & Fire Pension Fund may retain their status of contributing to and building service in the city's general pension fund. The above analysis is further supported by the language in Section 120.205 Ordinance Code which states " (a) ... Whenever an employing agency other than the city pays the salaries or wages of the employee-members of the fund, the employing agency shall make the foregoing deductions and contributions."

Given the above analysis, I answer the second question in the affirmative and opine that Police and Fire Pension Fund employees who are hired directly from the city's classified service by the Police & Fire Pension Fund are entitled to continue their participation in the General Employees' Pension Fund.

**Conclusion**

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The Police & Fire Pension Fund may hire three classes of employees:

- (1) Employees from outside the city government who have no city pension rights whatsoever, and will not gain any rights through their employment with the Police and Fire Pension Fund; and
- (2) Retirees of the city government who may continue to receive their retirement, and such other benefits as may be provided by the Police & Fire Pension Fund; and
- (3) Employees "transferring" from the classified service of the city who remain with the city's pension funds and receive such other benefits as may be provided by the Police & Fire Pension Fund.

If you have any questions please do not hesitate to contact me at your convenience.

- c: John Keane, Police & Fire Pension Fund  
Adrienne Trott, Chief of Personnel  
David Desmond, General Employees Pension Fund  
Angela Wester Morrow, General Employees Pension Fund  
Robert Glover, Police & Fire Pension Fund  
Lewis Caton, Police & Fire Pension Fund  
Ona Davis, Police & Fire Pension Fund  
Louis Black, Assistant General Counsel

**APPENDIX 6**

**BOARD MINUTES**

## **BOARD OF TRUSTEE MEETINGS REGARDING THE SSVRP**

**April 22, 1999** – New Business – referred to Compensation Committee for recommendations

**May 20, 1999** – Deferred

**June 17, 1999** – Report at next meeting

**July 15, 1999** – Deferred to August

**August 19, 1999** – Deferred to September

**September 8, 1999** – Report referred to Fund Counsel and Fund Actuary with instructions to develop alternative retirement recommendations for Senior Management Staff.

**October 21, 1999** – Deferred

**December 20, 1999** - Deferred

**January 20, 2000** – Deferred

**February 17, 2000** – Fund Counsel reported to the Board on his assignment regarding the establishment of a defined benefit plan for the Administrator and Asst. Administrator. Board will meet prior to next meeting and develop recommendations based on the March workshop.

**February 22, 2000** – ~~Special Board meeting re-rebalancing~~ Deferred

**March 16, 2000** – Special Board meeting and workshop scheduled for April 6, 2000.

**April 5, 2000** – Approval of the Plan was unanimous.

**May 10, 2000** – Fund Actuary presented his calculations to the Board to establish the plan. Motion was adopted.

3/10/15

DM

Gray, Prince & Gottlieb will speak to the Board of Trustees.

**The Chair took this item first. See the first page of the minutes.**

**NEW BUSINESS**

1. **MONTHLY REPORTS**

**Investment Monitor's Report**

Received as information. Copy in meeting file.

**Legal Report**

1. Order granting Disability Retirement to Anthony Rodgers.  
Attachment 2.

**Board Officers signed the Order granting Disability Retirement to Police Officer Anthony Rogers, approved at the meeting of February 11, 1999. Copy in meeting file.**

**Subcommittee Reports**

1. Architect Selection. Attachment 3.

**The Subcommittee report was received and discussed. Copy in meeting file.**

**A MOTION WAS MADE BY PETER SLEIMAN TO ADOPT THE SUBCOMMITTEE REPORT AND AUTHORIZE THE ADMINISTRATOR TO ENTER INTO CONTRACT NEGOTIATIONS WITH MR. WALTER TAYLOR KBJ. JIM MCAVITY SECONDED THE MOTION WHICH PASSED UNANIMOUSLY.**

2. Staff Pensions. Attachment 4.

**The Board had a brief discussion on Attachment 4, and additional discussion on the status of the Administrator's Contract and the issues associated with the payment for the Administrator's prior service pension benefit. The item was referred to the Compensation Committee for recommendations at the next meeting.**



**PRESENTATION**

Paul Ferwerda, of Thompson, Siegel & Walmsley will speak to the Board of Trustees.

Paul Ferwerda and Matt Thompson made a presentation to the Board for Thompson, Siegel & Walmsley. Copy in the meeting file.

**UNSCHEDULED PRESENTATION**

Ellie Friend, EFI Actuaries, made a short presentation on CASSIE, an automated asset allocation software program. Received as information. Copy in the meeting file.

**NEW BUSINESS**

1. **MONTHLY REPORTS**

**Investment Monitor's Report**

Mike Callaway presented the Monthly Flash Report. Received as information. Copy in the meeting file.

**Legal Report**

**Subcommittee Reports**

1. Compensation Committee. **Deferred.**

**Administrator's Report**

1. Legislative Update.

Ordinance reappointing James McAvity. Attachment 3.  
Received as information. Copy in the meeting file.

2. Pension Fraud - Sheliah Danise Dix Wallace. Attachment 4.  
Received as information. Copy in the meeting file.

3. Property Information.

a. One West Adams Street

1. Discussions with the Architect.

- d. Letter from JFCU with copy of check given to the Tax Collector.  
Attachment 10. Received as information.
4. Electronic Agenda System (EAS) Update. Estimate from International Rollcall. Attachment 11. **Withdrawn until such time the Architect can review systems with plans of One West Adams Street.**
5. Fiduciary liability insurance information. **Deferred.**
6. DROP list by occupation code as of July class. Attachment 12.  
**Received as information.**
7. Certificates of Appreciation to be presented for Larry Eddington and the outgoing City Council Members.

**DICK LUNDY MADE A MOTION WHICH WAS SECONDED BY JIM McAVITY TO APPROVE THE PRESENTATION OF CERTIFICATES OF APPRECIATION. THE MOTION PASSED UNANIMOUSLY.**

8. Proposed 1999/2000 Budget. Attachment 13.

**A MOTION WAS MADE BY BOBBY DEAL TO APPROVE THE 1999/2000 BUDGET. JIM McAVITY SECONDED THE MOTION WHICH PASSED UNANIMOUSLY.**

#### **Chair Report**

**The Chair inquired as to the status of the Administrator's Compensation Committee Report. Mr. McAvity will present the report at the next meeting.**

There being no further business, the Chair adjourned the meeting at 7:25 p.m.

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James D. McAvity, Secretary

10. Certificate of Appreciation.
  - a. Teresa Lundy, Human Resources Medical Desk.
  - b. Ray Norton, Sun Bank.

**A MOTION WAS MADE BY BOBBY DEAL AND SECONDED BY DICK LUNDY TO APPROVE THE CERTIFICATES OF APPRECIATION. THE MOTION PASSED UNANIMOUSLY.**

The Chair recognized Mrs. Ellie Friend, EFI Actuaries, Washington, D.C., who requested time for a brief presentation to the Board. Mrs. Friend presented a report entitled "Performance Analysis Net of Fee for Periods ending March 31, 1999; Actual vs. Index". Mrs. Friend made additional comments to the Board concerning the value of overall indexation. At the conclusion of the presentation, the Chair thanked Mrs. Friend for the research and for the presentation to the Board. Received as information. Copy in the meeting file.

The Chair inquired regarding the Compensation Committee Report. Mr. McAvity responded that he was gathering information and would give a report at the August meeting. The report was deferred to August.

There being no further business, the Chair adjourned the meeting at 7:45 p.m.

  
James D. McAvity, Secretary

**Chair Report**

**OLD BUSINESS**

**Compensation Committee Report**

Mr. McAvity stated that more time was needed to go over the material. **Deferred to next meeting.**

**NEW BUSINESS**

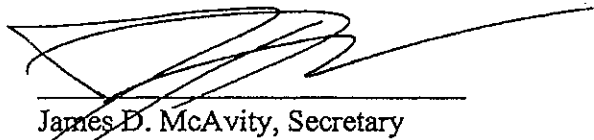
1. Invitation for Bids for selective demolition at OWAS.

**The Board authorized the Administrator to call for bids. The advertisement will appear in the August 23, 1999 Florida Times-Union.**

2. Insurance & Indemnifications Requirements for OWAS.

**A MOTION WAS MADE BY BOBBY DEAL TO APPROVE THE INSURANCE & INDEMNIFICATIONS REQUIREMENTS FORM. DICK LUNDY SECONDED THE MOTION WHICH PASSED UNANIMOUSLY.**

There being no further business, the Chair adjourned the meeting at 8:10 p.m.



James D. McAvity, Secretary

**OLD BUSINESS**

1. **RETURN TO WORK REFERRED BY THE ADVISORY COMMITTEE**

**Rodney Jones**, 267-13-5671, went on Disability Retirement on September 14, 1996, Firefighter, his Doctor now says he can work limited duty for 60 days and full duty after that period. Attachment 15.

**PETER SLEIMAN MADE A MOTION, SECONDED BY JIM McAVITY TO APPROVE THE RETURN OF RODNEY JONES TO WORK. THE MOTION PASSED UNANIMOUSLY.**

2. **Compensation-Committee Report**

**A MOTION WAS MADE BY PETER SLEIMAN AND SECONDED BY JIM McAVITY TO REFER THE COMPENSATION COMMITTEE REPORT TO ROBERT KLAUSNER, FUND COUNSEL, WITH INSTRUCTIONS TO CONFER WITH JARMON WELCH, FUND ACTUARY, AND DEVELOP ALTERNATIVE RETIREMENT RECOMMENDATIONS FOR SENIOR MANAGEMENT STAFF.**

3. **Investment Plan. Deferred.**

There being no further business, the Chair adjourned the meeting at 8:00 p.m.

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James D. McAvity, Secretary

4. Wall St. Journal article. Attachment 10. **RECEIVED AS INFORMATION. COPY IN THE MEETING FILE.**

**ADDED**

5. Updated & Amended Rules & Regulations. **Distributed in so that Board Members could read and discuss at next month's meeting. Copy in the meeting file.**

**Chair Report**

**OLD BUSINESS**

1. **Compensation Committee Report - DEFERRED.**
2. Investment Plan.

**JIM McAVITY MADE A MOTION TO APPROVE THE NEW INVESTMENT PLAN WHICH WAS SECONDED BY PETER SLEIMAN. THE MOTION PASSED UNANIMOUSLY.**

There being no further business, the Chair adjourned the meeting at 8:15 p.m.



James D. McAvity, Secretary

**OLD BUSINESS**

1. Compensation Committee Report and Workshop actions required.

**Deferred.**

**Chair Report**

There being no further business, the Chair adjourned the meeting at 8:20 p.m.

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James D. McAvity, Secretary

Temple, Michael L., 265-80-1716, Military service, (2 days), \$67.34.

7. MEMBERSHIP APPLICATIONS

Clear and Unrestricted

Hopson,	Tommy	Earl	427 25 3764	Police
McKenzie Jr.,	Tommy	Cecil	261 51 6468	Police
Reid,	Frank	Saxon	264 45 2452	Police
Tilley Jr.,	Douglas	Andrew	265 89 0534	Police

8. EDUCATIONAL OPPORTUNITIES

*Washington Legislative Update* - May 8 - 10, 2000 - The Washington Court Hotel, Washington, D.C. - International Foundation of Employee Benefits

**BOBBY DEAL MADE A MOTION TO APPROVE THE CONSENT AGENDA (ITEMS 1-8). DICK LUNDY SECONDED THE MOTION WHICH PASSED UNANIMOUSLY.**

Due to the Fund Counsel's schedule, the Board took up OLD BUSINESS first.

1. Compensation Committee Report and Workshop actions required.

**Fund Counsel reported to the Board on his assignment from the January workshop concerning the establishment of a defined benefit plan for the Administrator and Assistant Administrator. Discussion followed. The consensus of the board was for Mr. McAvity to meet prior to the next meeting with the Administrator and develop recommendations based on the workshop for the March meeting.**

NEW BUSINESS

1. MONTHLY REPORTS

**Investment Monitor's Report**

Mr. Callaway presented the Monthly Flash report. Copy in the meeting file. He also presented the Fourth Quarter Performance report. Questions concerning various managers were directed to Mr. Callaway. **Received as information. Copy in the meeting file.**

Following Mr. Callaway's presentation of performance reports and additional



2. The Administrator advised the Board of the need to re-balance assets from the equity portion of the Fund to the fixed accounts, in order to maintain the authorized asset allocation percentages. The amount needed to adjust the separate fixed income accounts totals \$10 million.

**FOLLOWING DISCUSSION AMONG THE BOARD MEMBERS AND INPUT FROM MR. CALLAWAY, A MOTION WAS MADE BY PETER SLEIMAN, SECONDED BY BOBBY DEAL TO TRANSFER FROM:**

<u>AMOUNT</u>	<u>ACCOUNT</u>	<u>COMPANY</u>
\$5,000,000	22-0236	LARGE CAP VALUE INDEX FUND
\$2,500,000	22-55609	MONTAG & CALDWELL
\$2,500,000	22-57124	FAYEZ SAROFIM

**AND DISTRIBUTE AS FOLLOWS;**

\$3,000,000	22-00920	EATON VANCE
\$3,000,000	22-00927	THOMPSON, SIEGEL & WALMSLEY
\$4,000,000	22-68952	CRITERION

**THE MOTION PASSED UNANIMOUSLY.**

The Board then reverted to Item 1.

1. **AFTER DISCUSSION OF THE PRESENTATIONS, PETER SLEIMAN MADE A MOTION TO CLOSE THE LARGE CAP VALUE INDEX FUND (\$49,613,016.00) AND TRANSFER IT AND THE OPPENHEIMER PORTFOLIO (\$47,029,688.00) TO THOMPSON, SIEGEL & WALMSLEY, SANFORD C. BERNSTEIN & CO., INC. AND STATE STREET GLOBAL ADVISORS. JIM McAVITY SECONDED THE MOTION WITH A CLARIFICATION THAT THE THREE PORTFOLIOS BE BALANCED WITH EACH STARTING WITH THE SAME AMOUNT. THIS WOULD RESULT IN THE FOLLOWING ASSET ALLOCATION:**

<b>SANFORD C. BERNSTEIN &amp; CO., INC.</b>	<b>\$ 45,895,929.33</b>
<b>STATE STREET GLOBAL ADVISORS</b>	<b>\$ 45,895,929.33</b>
<b>THOMPSON, SIEGEL &amp; WALMSLEY</b>	<b>\$ 4,850,845.33</b>
<b>(BRINGS TSW'S TOTAL ALLOCATION TO \$45,895,929.33)</b>	

**THE MOTION WAS PASSED UNANIMOUSLY.**

3. Rental information on One West Adams Street deferred for additional information from the Administrator concerning possible tenants.
4. Compensation committee.

Police and Fire Pension Fund  
Board of Trustees  
Special Meeting - February 22, 2000  
Minutes - Page 3

Mr. McAvity handed out to the Trustees and the Administrator a situation recap and request for additional information from the Administrator. Action deferred until March meeting.

There being no further business, the Chair adjourned the meeting at 9:05 p.m.

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James D. McAvity, Secretary

**OLD BUSINESS**

1. **Compensation Committee Report and Workshop actions required.**

The Administrator reported he had gathered the documentation requested by Mr. McAvity, and has had several conversations and meetings with Mr. McAvity concerning the Staff Pension issue since the February meeting. The Administrator and Mr. McAvity met again Wednesday, to discuss the recommendations and instructions from the January and February Board meetings, including the cost factors requested from the Fund Actuary. The Administrator reviewed notes from the last meeting. Following brief discussion, including comments from Trustees Sleiman, Lundy, Deal and Jaffe, the Chair scheduled a special Board meeting and workshop for April 6 at 4:00 p.m.

Trustee Deal stated he would submit a plan along the lines discussed at the January and February meetings, and requested the Staff to submit suggested changes, if any, from the current plan in writing, for inclusion in the Board Discussions.

**Deferred until a workshop and Special Meeting to be held Thursday, April 6, 200 at 4:00 p.m.**

There being no further business, the Chair adjourned the meeting at 7:45 p.m.

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James D. McAvity, Secretary

**JACKSONVILLE POLICE AND FIRE  
PENSION BOARD OF TRUSTEES  
SPECIAL MEETING MINUTES - APRIL 5, 2000**

**NOTE:** If anyone decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**PRESENT**

Barbara Jaffe, Board Chair  
James McAvity, Board Secretary  
Lt. Bobby Deal, Police Trustee  
Capt. Richard Lundy, Fire Trustee  
Peter Sleiman, Trustee

**STAFF**

John Keane, Administrator  
Robert Klausner, Fund General Counsel

**OLD BUSINESS**

1. Compensation Committee Report.

**MINUTES OF THE BOARD OF TRUSTEES SITTING AS THE COMMITTEE  
OF THE WHOLE ON SENIOR STAFF COMPENSATION**

On April 5, 2000, the Board of Trustees, sitting as the Committee of the Whole on Senior Staff Compensation met at the office of the Police and Fire Pension Fund, 3200 Emerson Street, Jacksonville, for the purpose of addressing the establishment of a defined benefit retirement plan for senior staff of the Fund. All trustees were present along with Administrator John Keane and General Counsel, Robert Klausner.

The Board received a report from Jarmon Welch, actuary for the Fund setting forth the costs of establishing a defined benefit plan to replace the existing defined contribution plan. The Board determined that the cost of the Plan was 24.3% of payroll, of which 7% would be contributed by the staff and 17.3% contributed by the Fund.

The new plan would be credited with start up assets to reduce the unfunded accrued actuarial liability of \$157,000 drawn from deferred salary increases and current assets of the defined contribution plan previously established. The Board also determined that salary advancement other than cost of living allowances would be deferred through 2001 to help defer the cost of the new plan.

The new plan would provide for normal retirement at age 65 with 5 years of

service and five year vesting. Early retirement would be available at age 60 with 5 years of service. The early retirement reduction would be 0.5% per month before age 65. The benefit would be equal to 2.5% of the average of the last 24 months of salary for each year of service. A spousal survivorship-post retirement benefit of 75% of the member's benefit will be provided. Cost of living benefits will be equal to 3% per year.

Pre-retirement disability and death benefits will be provided by a policy of insurance. There will be no military buyback, no time connection, no service purchase or DROP benefits. The new plan would be carried as a separate account of the Fund.

The existing ICMA account will be closed and its assets transferred to the new defined benefit plan. Membership in the new plan is voluntary and is limited to the administrator and deputy administrator. The Board reserves the right to close the plan to new members in its sole discretion.

It was further determined that the terms of the new plan should be contained in a separate memorandum and incorporated into the employment contracts of the eligible employees.

Following a full discussion approval of the plan was moved by Trustee Lundy and seconded by Trustee McAvity. The motion was approved unanimously.

Following the adoption of the motion, the meeting was adjourned.

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James D. McAvity, Secretary

**JACKSONVILLE POLICE AND FIRE  
PENSION BOARD OF TRUSTEES  
SPECIAL MEETING MINUTES - MAY 10, 2000**

**NOTE:** If anyone decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**PRESENT**

Barbara Jaffe, Board Chair  
James McAvity, Board Secretary  
Lt. Bobby Deal, Police Trustee  
Capt. Richard Lundy, Fire Trustee

**EXCUSED**

Peter Sleiman, Trustee

**STAFF**

John Keane, Administrator  
Dick Cohee, Asst. Administrator

**GUESTS**

Jarmon Welch, Plan Actuary  
Carolyn Emmott, Pension Board Consultants  
Walter Taylor, KBJ Architects

1. Jarmon Welch, Pension Board Consultants, will give a presentation to the Board of Trustees.

Jarmon Welch presented the Board his calculations regarding the proposal contained in his letter of April 13, 2000 to establish the Jacksonville Police and Fire Pension ~~Fund Executive Retirement Plan~~ replacing the current Money Purchase Retirement Account maintained by the International City Managers Association. The proposed program represented a decrease in cost over the original program approved by the Board in March of 1999, but an increase in the current level of required funding from the Board. The cost breakdown utilizing Alternative 1, is identical to the current cost for the Police and Fire Plan, 27.6% of payroll, and will require a 7% contribution from the covered employees. Questions from Board Members followed the presentation.

**AFTER A LENGTHY DISCUSSION PERIOD, A MOTION WAS MADE BY BOBBY DEAL, SECONDED BY JIM MCAVITY TO REPLACE THE CURRENT MONEY PURCHASE RETIREMENT ACCOUNT MAINTAINED BY THE INTERNATIONAL CITY MANAGERS ASSOCIATION, WITH THE PROPOSED DEFINED BENEFIT PLAN OUTLINED ON EXHIBIT C, USING THE ALTERNATIVE 1 FUNDING APPROACH. THE MOTION WAS ADOPTED.**

**The Chair directed the administrator to forward the proposed plan document to the Fund Counsel for incorporation into a written Plan, and to confer with the independent Auditor to insure the expenses and contributions would be properly recorded.**

2. **Walter Taylor, KBJ Architects, will give a presentation to the Board of Trustees on One West Adams Street.**

**Mr. Walter Taylor addressed the Board concerning the proposed exterior designs for One West Adams Street.**

**FOLLOWING DISCUSSIONS AND EXCHANGE OF VIEWPOINTS CONCERNING THE VARIOUS OPTIONS, A MOTION WAS MADE BY MCAVITY AND SECONDED BY LUNDY TO APPROVE PROPOSED DESIGN 1, AS THE DESIGN FOR THE EXTERIOR OF THE NEW HEADQUARTERS BUILDING FOR THE FUND AT ONE WEST ADAMS STREET. THE MOTION WAS ADOPTED.**

**The Board considered the suggestion to expand the assignment of KBJ under the guidelines issued by the AIA for Construction Supervision. Mr. Taylor will contact a number of well qualified contractors to determine their availability. The Administrator will contact the Purchasing Department for guidance in the bidding process.**

3. **Mr. Welch briefed the Board on the need to update a Fund evaluation in view of the market performance. It was noted that evaluations are required every 3 years, although the Board, by policy has authorized studies more frequently. Due to investment changes adopted by the Board in 1998 authorizing international investments; assumption changes amending the 1992 Settlement Agreement enacted in 1999; and market environmental factors, Mr. Welch recommended the Board authorize a new Actuarial Evaluation of the Fund, as of March 31, 2000 utilizing the entry age normal actuarial cost method and review all actuarial factors, and upon approval and adoption of the Evaluation by the Board and the State of Florida, establish the City contribution rate effective October 1, 2000.**

**Mr. Welch and the Administrator discussed with the Board the proposal to make major modifications to the settlement agreement between the Board and the City concurrent with the new Actuarial Evaluation. The Administrator stated the "reserve account" concept has served both parties**