

POLICE AND FIRE PENSION FUND: Senior Pension Plan

Interim Report, August 28, 2012

Office of Ethics, Compliance and Oversight (ECO)

The following abbreviations will be used: SPP (Senior Pension Plan); ECO (Office of Ethics, Compliance and Oversight, Carla Miller, Director); OGC (Office of General Counsel, Cindy Laquidara); PFPF (Police and Fire Pension Fund); PFPB (the Police and Fire Pension Board).

On August 6th, 2012, the Director of ECO commenced a study as to the formation and operation of the "Senior Pension Plan" (SPP) of the PFPF. The City Council Finance committee discussed this issue during its hearing on the PFPB's budget on August 10th; they will meet again on August 29th to resume discussions on the PFPB budget. This interim report is submitted to summarize some of the facts learned to date in order to assist the parties, including the Administration, the Council and the PFPB. All documents referenced are public records.

On August 14, 2012, General Counsel, Cindy Laquidara, issued an opinion that the PFPB was not authorized under the Charter to create this "Senior Pension Plan". (Note: this plan was created for 3 people working for the Fund that were already on city pensions and were not eligible for another city pension nor were they eligible for the State Retirement pension. The "Senior Pension Plan" was created in September 2000 by the PFPB and benefits were backdated.)

The Director of the ECO office attended PFPB meetings on August 15th, 17th and 28th. On Friday, August 24th, documents were provided to her from the PFPF in response to her questions. After an initial review, this preliminary outline is submitted, although additional information will be collected. I welcome any clarifications to this data.

A. Senior Pension Plan Legality.

1. There are 2 questions: is the SPP legal and was it disclosed to City Council or to the City Council Auditor in a meaningful, transparent and appropriate manner?
2. As to the legality of the plan, there are 2 viewpoints on this; one is outlined in the General Counsel's opinion of August 14, 2012. The Attorney for the PFPB has a different opinion, as explained at their meetings and in documents provided to the ECO office. To briefly summarize their positions:
 - a) OGC. The PFPB is set up under Article 22 of the City's Charter to manage a trust (the pension funds). It was not set up to create other pensions with long term obligations to the taxpayers of Duval County. Specifically, in the Charter under Section 22.07, it states "nothing shall empower the board to amend...the pension plan without the approval of the Jacksonville City Council." Setting up a separate "Senior Pension Plan" within the overall Police and Fire pension plan is an unauthorized amendment to the Police and Fire Pension Plan.

Also, Article 16 of the City Charter establishes the Pension system of the City and does not authorize any agency other than City Council to create new plans.

- b) PFPF. The position of the PFPF Board attorney, Bob Klausner, is that the city Charter, Section 22.04 “General Powers” gives the Board the power under (e) to: “fix the compensation of the administrator. It is the opinion of Mr. Klausner that, legally, “compensation” includes the creation of a pension, by definition.

There are only 3 possible outcomes to this dispute: one side changes its mind and agrees with the other side (not likely); there is a compromise reached and the law changed accordingly to clarify the issue (with notice to citizens and opportunity for them to be heard); or a lawsuit will have to be filed by the City to decide the issue.

B. Disclosure of Senior Pension Plan. This inquiry is completely separate to the question above as to whether or not the SPP Plan is legal.

1. There are 2 positions on this. (1) **City Council Auditor**. City Council Auditor states that his office was not aware of the “Senior Pension Plan” until 2012. (In the Actuarial Report of Oct. 1, 2011, for the overall Police and Fire Plan, submitted to the Council Auditor, it was stated: “As of Sept. 30, 2011, the assets in the Senior Staff Retirement Plan were \$2,345,679, **which are being recognized for the first time in this report.**”)

This certainly implies that the SPP Plan was made part of the overall Police and Fire Plan, an amendment to the Plan. OGC noted that the PFPB is not authorized to do this under the Charter (section 22.07) without City Council approval which does not exist.

According to the City Council Auditor, the SPP was not disclosed as a line item in the budgets presented to City Council each year.

- 2) **PFPF Director**. In a letter to the ECO office, the PFPF Director states that the Senior Pension Plan was disclosed in “Budgeted Pension Contribution Requirements” and in the city’s accounting system “FAMIS”. (Note: more documentation is needed on this. FAMIS is the internal accounting system of the city, and according to city officials, would not be consulted line by line unless a complete audit was conducted. Where exactly is notice to the city on the Senior Pension Plan? Is it clear and unambiguous?) Have independent audits of the City recognized this liability and if not, why not? Citizens want to know not only that the plan is legal and reasonable, but that it was transparent in its implementation.
2. **Cost of Senior Plan.** In the 2001-02 budget year, a FAMIS (internal accounting) transfer was made in the PFPF budget in the amount of \$637,606 as an “employers contribution” to the Senior Pension Plan. These funds will be tracked to see where they came from and how they were reported to City Council. In the budget submission to City Council for the PFPF in FY 2001-2, this amount does not appear to be reported. In the actuarial reports just received, the “trustee’s initial deposit” is listed as \$541,500; where is this disclosed to City Council in budget submissions or in any other documents? It

would seem that the \$541,500 in funds for the Senior Pension Plan had to come from somewhere; either from existing funds in the Police and Fire fund or from the city General Funds. So, this is pending, as more documents are needed to sort out the flow of this money.

The ECO Director just received (8/24/2012) actuarial reports and other documents for the "Senior Pension Plan" (SPP) going back to 2000. According to the City Council Auditor, he has not received copies of these reports at any time in the past.

A question would be whether the State of Florida has authorized this separate pension plan, the SPP, for 3 employees (all pension plans of local governments have to be authorized) and if the past actuarial reports of the SPP have been submitted to the State of Florida.

In 2004, it was noted in the actuarial report that the trustee contribution was 18.55% of covered payroll. In 2005, the cost of the Plan was \$121,637; 29.69% of the covered pay. (That year, health insurance was added to provide "parity" with the regular Police and Fire Pension Plan.) In 2009, the cost of the SPP was \$134,889 which was 50.78 % of total payroll. In the next actuarial report done in 2011, the cost of the "Senior Plan" is listed at \$523,102 or a 219.14 % increase of the covered payroll. There were several changes in the Plan assumptions which need to be examined. And, if the plan was created for 3 people, (2 retired and one ready to retire) and benefits have to be generated for decades to come, who are the employees contributing to these funds? Where does the money come from?

The ECO office looks forward to the continued cooperation of the City Council Auditor's office and the Police and Fire Pension Fund staff in providing information for this pension study done for the benefit of the taxpayers of Duval County.

Carla Miller

