



Police and Fire Pension Fund - #736 Executive Summary

Why CAO Did This Review

This audit was performed due to the ongoing conversation regarding pensions throughout the nation and the size of the annual pension payroll. The Police and Fire Pension Office processed a total pension payroll of \$91 million and refunds of \$313,593 during FY 2010/11 and a total pension payroll of \$48 million and refunds of \$177,254 during the first half of FY 2011/12. The audit focused on payments to members of the Police and Fire Pension Plan (PFPF) and the Senior Staff Voluntary Retirement Plan (SSVRP). Sworn Police Officers and Firefighters are eligible to be members of PFPF and select employees of PFPF are eligible to be members of the SSVRP.

Our audit did not include an analysis of the investment of pension funds nor did it include a review of the contributions made to the plan. The scope of our audit for testing purposes was October 1, 2010 through March 31, 2012, unless otherwise noted.

What CAO Recommends

We recommend that PFPF take necessary actions to correct the issues noted going forward, and work with legal counsel to determine how to handle past issues.

The Mayor's Office and City Council need to pursue state law changes that would address the relationship between the City and PFPF.

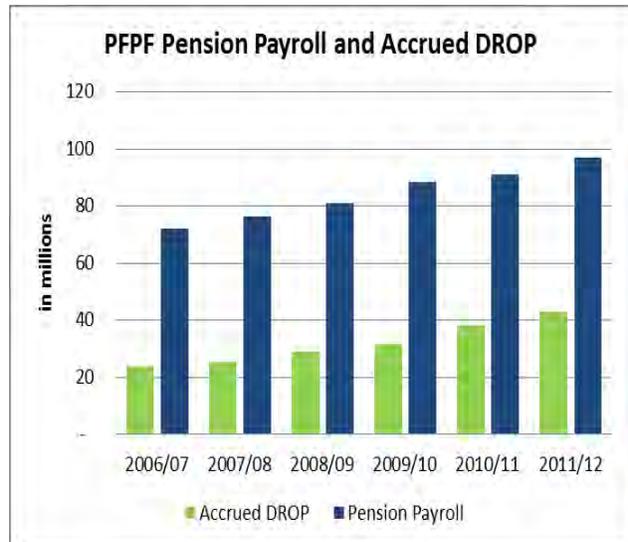
What CAO Found

We found significant issues concerning the following items:

- Application of the effective retirement date for DROP members which is utilized to determine the length of DROP eligibility
- The compensation amount which is used to calculate the cost of time service connections for members

We found that there could be improvement with the processes surrounding the termination of pension benefits.

Overall, it appears that refund payments, and non-DROP related pension benefits were materially accurate. Outside of one significant Cost of Living Adjustment (COLA) issue, COLAs were materially accurate as well.



(Please refer to the full report for more detailed information)



Council Auditor's Office

Police and Fire Pension Fund Audit

November 21, 2012

Report #736

Released on: July 18, 2013

EXECUTIVE SUMMARY

AUDIT REPORT #736

INTRODUCTION - 1 -

SCOPE AND METHODOLOGY BY OBJECTIVE - 3 -

REPORT FORMAT..... - 6 -

SUGGESTED ADDITIONAL AUDIT WORK..... - 6 -

STATEMENT OF AUDITING STANDARDS - 6 -

AUDITEE RESPONSES - 6 -

AUDIT CONCLUSIONS - 6 -

OBJECTIVE 1 - 7 -

OBJECTIVE 2 - 11 -

OBJECTIVE 3 - 12 -

OBJECTIVE 4 - 13 -

OBJECTIVE 5 - 14 -

SUPPLEMENTAL ISSUE - 16 -

OVERALL CONCERN..... - 20 -

ATTACHMENT ‘A’ – POLICE AND FIRE PENSION FUND ATTACHMENT

OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



November 21, 2012

Report #736

Honorable Members of the City Council
City of Jacksonville

INTRODUCTION

Pursuant to Section 5.10 of the Charter of the City of Jacksonville and Chapter 102 of the Municipal Code, we examined the operations of the Jacksonville Police and Fire Pension Board of Trustees. The audit focused on payments to members of the Police and Fire Pension Plan. It did not include an analysis of the investment of pension funds nor did it include a review of the contributions made to the plan. The scope of our audit for testing purposes was October 1, 2010 through March 31, 2012, unless otherwise noted.

Pursuant to Section 22.04 of the Charter of the City of Jacksonville, the Police and Fire Pension Fund Board of Trustees has the power to administer the Police and Fire Pension Fund. The Police and Fire Pension Office staff is tasked with calculating pension benefits, which encompass the calculation and payment of the Deferred Retirement Option Program (DROP), biweekly pension benefits, and refunds. The Police and Fire Pension Office processed a total pension payroll of \$91 million and refunds of \$313,593 during FY 2010/11 and a total pension payroll of \$48 million and refunds of \$177,254 during the first half of FY 2011/12. Furthermore, upon request, staff must determine periods of time service with the City (or other allowable agencies) and military that are eligible for purchase and then calculate the cost to purchase the associated time. The overall guidance for the Pension Office for the calculation of Police and Fire pension benefits is Chapter 121 of the Municipal Code and the re-stated agreement between the City and the Fund.

There is also a second plan administered by the Fund which is the Senior Staff Voluntary Retirement Plan. This plan was approved by the Police and Fire Pension Board of Trustees for the senior staff of the Pension Office. Specifically, it names the Administrator and Assistant Administrator as members and allows the Board to approve the addition of other members.

On the next page is a simplified comparison of some of the main benefits of the General Employees Retirement Plan (GEPP), the Corrections Officers' Retirement Plan (Corrections), the Police and Fire Pension Fund (PFPF), and the Senior Staff Voluntary Retirement Plan (SSVRP). This is not meant to be all inclusive, but is provided to assist in the reader's understanding of the benefits afforded under each plan and to assist in understanding terminology and the procedures undertaken during the audit. This information should not be relied upon for determining individual benefits. The Municipal Code and Summary Plan Descriptions approved by the Boards should be consulted for those purposes.

	GEPP	Corrections	PFPF	SSVRP
Employee Contributions	Members contribute 8% of pensionable compensation toward pension (7.7%) and disability pension (.3%).	Members contribute 8% of pensionable compensation.	Members contribute 7% of pensionable compensation.	Members contribute 7% of pensionable compensation.
Employer Contributions	City shall make such contribution together with pick up's on behalf of members and the plans earnings that will maintain the plan on a sound actuarial basis determined by the Board.	City shall make such contribution together with pick up's on behalf of members and the plans earnings that will maintain the plan on a sound actuarial basis determined by the Board.	City shall contribute amount that when combined with the employee contributions and other applicable revenue sources that equals no less than the amount in the most recent actuarial report.	Police and Fire Pension Fund shall contribute amount which when combined with employee contributions and the earnings to maintain a sound actuarial plan.
Final Monthly Compensation	Highest paid 36 consecutive months (78 pay periods) within the prior 10 years.	Highest paid 36 consecutive months (78 pay periods) within the prior 10 years.	Average pensionable salary for 52 pay periods immediately prior to retirement.	Average pensionable salary for 24 months immediately prior to retirement.
Normal Benefit Percentage	Members earn 2.5% per credited year if they have over 30 years of credited service, are age 55 and have 20 years of credited service or are over age 65 with 5 years of credited service. Amount shall not exceed 80%.	First 20 years the member is multiplied by 3% and the next 10 years are multiplied by 2%. Amount shall not exceed 80%.	First 20 years the member is multiplied by 3% and the next 10 years are multiplied by 2%. Amount shall not exceed 80%.	Members may retire with 5+ years of credit service at age 65 and are credited with 3% per year of credited service.
Early Retirement Benefit Percentage	Completion of 25+ years of service, but less than 30 years, regardless of age with benefit of 2% per year of credited service; or Attaining age 50 and completion of 20 years credited service with benefit of 2.5% per year of credited service with a .5% penalty for each month less than age 55.	None	None	Members may retire early with an amount calculated in the same manner as the normal retirement with the benefits reduced by .5% each month the member is less than 65 years old.
Vested Retirement (Minimum 5 years)	Member can commence receive benefits starting at age 65 based on 2.5% per credited year of service.	Member can commence receive benefits starting at age 65 based on 3% per credited year of service.	3% per year of credited service to commence the date at which the member would have reached normal retirement.	Members may elect to commence receiving benefits based on 3% per year upon attaining age 65 or a reduced retirement at age 60 with a .5% penalty for each month less than age 65.
Base Pension Benefit	Final Monthly Compensation x Benefit Percentage			
Supplemental Benefit	Shall receive monthly supplement benefit equal to \$5.00 multiplied by number of years credited service, in addition to cost of living benefits. Minimum \$25, Maximum \$150	Shall receive monthly supplement benefit equal to \$5.00 multiplied by number of years credited service, in addition to cost of living benefits. Minimum \$25, Maximum \$150	Shall receive monthly supplement benefit equal to \$5.00 multiplied by number of years credited service, in addition to cost of living benefits. Minimum \$25, Maximum \$150	Shall receive monthly supplement benefit equal to \$5.00 multiplied by number of years credited service, in addition to cost of living benefits.
COLA	Receive 3% COLA, to commence the first full pay period in April after waiting period of five years after the fiscal year the retirement began.	Receive 3% COLA the first full pay period each December.	Receive 3% COLA commencing the first full pay period the January after the fiscal year in which the member retired.	Receive 3% COLA commencing the first full pay period the January after the fiscal year in which the member retired.
Bonus	None	None	3% of Base Benefit paid during fiscal year	None
Survivor Benefits (Excluding Dependent Child and Parent Considerations)	Surviving spouse of retiree (or member eligible for normal retirement) will receive 75% of the base benefit and COLA the employee was eligible for plus the supplement. Surviving spouse of dead active member who is not eligible for retirement, the base benefit percentage is calculated as if the member reached normal retirement stage and was 55 years old and had 20 years of credited service or the number of years of credited service was stepped up to the amount the member would have had at age 65, whichever is less.	Surviving spouse of retiree (or member eligible for normal retirement) will receive 75% of the base benefit and COLA the employee was eligible for plus the supplement. Surviving spouse of dead active member who is not eligible for retirement, the base benefit percentage is calculated as if the member reached 20 years of credited service or the number of years of credited service was stepped up to the amount the member would have had at age 65, whichever is less.	Surviving spouse of retiree (or member eligible for normal retirement) will receive 75% of the base benefit and COLA the employee was eligible for plus the supplement. Surviving spouse of dead active member who is not eligible for retirement, the base benefit percentage is calculated as if the member reached 20 years of credited service.	Surviving spouse of retiree (or member eligible for normal retirement) will receive 75% of the base benefit and COLA the employee was eligible for plus the supplement. Surviving spouse of a dead active member who is not eligible for retirement, is eligible for a benefit of 49.5% of the final average compensation.
Minimum Retirement Benefit for Normal and Early Retirement	The minimum monthly benefit for a normal or early retiree shall be \$25 per year of credited service with the \$25 minimum amount being increased every October 1 starting in 1995 for members who retire during that fiscal year. The minimum benefit for a spouse is 75% of this amount.	The minimum monthly benefit for a normal or early retiree shall be \$25 per year of credited service with the \$25 minimum amount being increased every October 1 starting in 1995 for members who retire during that fiscal year. The minimum benefit for a spouse is 75% of this amount.	\$400 per month for original retiree and \$300 per month for survivors.	None
DROP	None	Member effectively retires on date of participation. Continue to work for City for period not to exceed the maximum allowable period (under no circumstances more than 5 years). During DROP member contributes 2% to pension plan. Retirement is based on the date the member enters DROP and the base pension benefit accrues in the account plus COLAs plus interest which is calculated at the rate earned by the plan.	Member effectively retires on date of participation. Continue to work for City for period not to exceed the maximum allowable period (under no circumstances more than 5 years). During DROP member contributes 2% to pension plan. Retirement is based on the date the member enters DROP and the base pension benefit accrues in the account plus COLAs plus interest of 8.4%.	None
BACKDROP	Member makes election upon leaving employment. Maximum allowable period of participation is five years while not going back to a date prior to 30 years of credited service. Retirement is based on BACKDROP date and a calculation is made to determine the base pension benefit the member would have received during the BACKDROP period. Interest rate is the same interest rate earned by the plan within a range of +/- 4% annual rate of return.	None	None	None
PLOP	Member makes election upon leaving employment. Member may elect to receive the actuarial equivalent value of 5%, 10% or 15% future pension benefits. Electing this results in the base benefit being reduced by the corresponding percentage.	None	None	None

SCOPE AND METHODOLOGY BY OBJECTIVE

Objective 1

Statement

To determine whether payments to pensioners were properly calculated and paid.

Scope

Our scope included all pension payments paid or credited to pensioners who either entered Phase 1 of DROP (active City employees who are paying into DROP) or began receiving pension payments between October 1, 2010 and March 31, 2012.

Methodology

To perform this testing we selected two different sets of individuals. One set was 207 individuals who were participating in Phase 1 of DROP and began participation between October 1, 2010 and March 31, 2012. The other set was 164 individuals who began receiving a pension benefit between October 1, 2010 and March 31, 2012. This population includes individuals who are in Phase 2 of DROP (pensioners who are receiving DROP disbursements). We judgmentally determined that a sample size of 50 for each population set would provide us with needed coverage to draw substantiated conclusions. We randomly selected 50 of each population to be tested.

Utilizing information found within JaxPension, the City's current and former payroll systems, and the members file held within the Pension Office, we tested to confirm the following:

- The correct amount of credited service was calculated.
- The benefit percentage was accurate based on the employee's years of credited service.
- The correct final compensation amount was calculated.
- The correct biweekly benefit was calculated including the supplement and Cost of Living Adjustment (COLA).
- The DROP payments were correctly calculated and paid.
- Payments to pensioners commenced at the proper time.

Objective 2

Statement

To determine whether refunds of employee pension contributions were correctly calculated and distributed.

Scope

Our scope included all refunds of employee pension contributions approved by the Pension Board of Trustees between October 1, 2010 and March 31, 2012.

Methodology

To compile a listing of refunds, we combined calendar year refund reports from JaxPension (the City's Pension Payroll System) and separated out the refund of contributions that were during our audit scope. We compared the information from JaxPension to the City's Financial and

Management Information System (FAMIS) to confirm completeness and to arrive at a listing of employee contribution refunds.

This left us with a population of 43 refunds. Due to the small population, we decided to test all 43 refunds. For each refund, we utilized Oracle (the City's HR and Payroll System) to confirm the member's total refund matched the member's total contributions to the plan. We requested and reviewed the individual files as needed.

Objective 3

Statement

To determine whether time service connections and military time service purchases were properly calculated and that the members paid the correct amount owed.

Scope

Our scope included all time service purchases and connections approved by the Board of Trustees between October 1, 2010 and March 31, 2012.

Methodology

To compile a list of all time service connections, we obtained each of the consent agendas of the Board of Trustees within our audit scope. The consent agenda contained all time service connections that had been initiated during our audit scope. A sample size of 54 was statistically determined to be reasonable based on the assessed risk and population of 83.

We randomly selected the 54 time service connections for testing. Utilizing information found within JaxPension, Oracle, and the member's file (held within the Pension Office), we confirmed that the time was eligible for purchase, there was support for the amount agreed to be paid and if the purchase was completed, whether or not the correct amount owed was paid and the pension date was properly adjusted.

Objective 4

Statement

To determine whether COLAs were computed and paid accurately

Scope

Our scope included all current pensioners as of March 31, 2012 that had an effective retirement date on or after October 1, 1998. We selected this period of time so that we could include multiple COLA groups, while limiting us from timing issues of different COLA laws.

Methodology

We compiled a listing of all pensioners receiving payments as of the first pay period after the last day of our audit scope. We included people that were receiving pension payments and those that were in Phase 1 of DROP (active City employees who are paying into DROP) since members of DROP receive COLA increases. Based on the requirements of Municipal Code Section 121.201(d)(1), we created a multiplier for the base benefit to arrive at what amount should have

been paid to all pensioners within our audit scope as of the first pay period after the last day of our audit scope. We compared the COLA amount paid with the COLA amount that should be paid based on our analysis.

Objective 5

Statement

To determine whether all pensions terminated were done so properly and determine whether the Pension Office has appropriate controls in place to detect and remove ineligible pensioners.

Scope

Our scope was October 1, 2010 through March 31, 2012 for our testing of the detection and removal of ineligible pensioners. We reviewed to confirm there was proper support for payments that were stopped, that annual affidavits were being properly filed, child benefit payments were being terminated properly when they were no longer eligible, and that the City was using all available mechanisms to detect deceased or fictitious pensioners.

Methodology

To confirm there was support for pension payments terminated during our audit scope we compiled a listing of all pensions terminated throughout our audit scope based on the biweekly terminated pensioner reports and by identifying those who were on the pension payroll as of October 1, 2010 and not on the pension payroll as of March 31, 2012. To determine the completeness of our population, we pulled pension payroll reports from immediately before and after our audit scope. In all, our population totaled 94 terminated pensioners. Due to the benefit gained by testing 100% compared to the amount of work required, we decided to test all 94 terminated pensioners. We then verified there was support in the file to substantiate why payments ceased and if applicable why the payments resumed.

To confirm that all pension benefit payments ceased if an annual affidavit was not filed on time, we compiled a listing of all non-responders issued a second affidavit notification for the fiscal year 2010/11. Non-responders who received a second notification are individuals who did not respond within the original 30 days allotted after the first notification. We statistically determined a sample size of 76 was reasonable based on the assessed risk and population of 169. We selected these criteria based on our preliminary work and the actual number of pensioners who received a second notification. We then randomly selected the 76 non-responders for testing to determine if either the payments stopped or there was an affidavit in the file that was received prior to the required date. If payments were stopped and then resumed, we confirmed there was proper support.

To confirm that all child benefits were properly shut off when the individual was no longer eligible, we compiled a listing of all individuals receiving a child benefit payment per the system. We verified that each was either under 18 years old, a qualified student, or classified as a disabled child and approved by the Board of Trustees.

To confirm what controls exist in other pension plans to detect deceased pensioners, we contacted other pension plans to find out what they did to detect deceased pensioners.

REPORT FORMAT

Our report is structured to identify Internal Control Weaknesses, Audit Findings, and Opportunities for Improvement as they relate to our audit objectives. Internal control is a process implemented by management to provide reasonable assurance that they achieve their objectives in relation to the effectiveness and efficiency of operations and compliance with applicable laws and regulations. An Internal Control Weakness is therefore defined as either a defect in the design or operation of the internal controls or is an area in which there are currently no internal controls in place to ensure that objectives are met. An Audit Finding is an instance where management has established internal controls and procedures, but responsible parties are not operating in compliance with the established controls and procedures. An Opportunity for Improvement is a suggestion that we believe could enhance operations.

SUGGESTED ADDITIONAL AUDIT WORK

In limiting the scope of this audit, we did not pursue the following areas, and as such they should be considered for future audit work:

- A review of the operating expenditures of the Police and Fire Pension Fund.
- A review of the mechanics behind employee and employer contributions to the plan.

STATEMENT OF AUDITING STANDARDS

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDITEE RESPONSES

Responses from the auditee have been inserted after the respective finding and recommendation in the appendix for each objective. We received the responses from John Keane, Police and Fire Pension Fund Administrator, July 15, 2013, on behalf of the Police and Fire Pension Fund. We received the responses from Martin Senterfitt, Fire Chief, June 3, 2013, on behalf of the Fire Department.

AUDIT CONCLUSIONS

1. Based on testing performed, we found that normal benefit payments to pensioners were properly calculated and paid; however, there were significant deficiencies in the area of DROP benefits.
2. Based on testing performed the refunds of employee pension contributions were materially accurate and properly distributed.

3. Based on testing performed we found significant issues with the calculation of final compensation for time service connections when portions of pensionable pay were only paid once per month. However, the other time service connections were materially accurate in the calculation of the amount of time eligible for purchase, calculation of the amount owed, and the collection of the amount owed.
4. COLA payments were materially accurate with the exception of one significant finding.
5. Based on testing performed we found numerous issues with the termination of pension benefits, such as errors in the transition from the original retiree to the survivor.

OBJECTIVE 1

To determine whether payments to pensioners were properly calculated and paid.

Based on testing performed, we found that normal benefit payments to pensioners were properly calculated and paid; however, there were significant deficiencies in the area of DROP benefits.

Finding 1 – 1 *DROP Election Date and Eligibility Issue*

We found that the Police and Fire Pension Fund was not being consistent with the handling of the member’s date of election to participate in the DROP. Section 121.209 of the Municipal Code states:

Upon an eligible member's election to participate in the DROP, the amount of credited service and final average salary becomes frozen for purposes of determining pension benefits. Additional service beyond the date of entry into the DROP shall no longer accrue any additional benefits under the Pension Fund.

Sec. 121.209(b) (1) of the Municipal Code goes on to state:

An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 130 full bi-weekly pay periods (60 months) following the date on which the member begins participation in the DROP. The following time limits will apply for eligibility to elect to participate in the DROP.

<i>Years of Credited Service at Time of Election</i>	<i>Maximum Pay Periods of Participation</i>	<i>Maximum Months of Participation</i>
<i>20 but less than 30 years</i>	<i>130 biweekly</i>	<i>60</i>
<i>30 but less than 31 years</i>	<i>78 biweekly</i>	<i>36</i>
<i>31 but less than 32 years</i>	<i>52 biweekly</i>	<i>24</i>

The Police and Fire Pension Fund Office interprets the law to state they have the ability to allow a member to apply early from an administrative perspective. Currently, members are eligible to file their paperwork to participate in the DROP before they reach 20 years of service as long as the effective date is after the 20 years are reached. Separately, they interpret the Municipal Code to state that members applying prior to 30 years, but who will obtain 30 years prior to the effective participation date, are eligible to participate for the entire 5 years and also receive an 80% benefit on their base pension calculation.

At the very least, either some members are being allowed to participate earlier than they are eligible or others are being allowed to participate for a longer period of time than they are eligible. The overall issue is that the law is being inconsistently interpreted for the sole benefit of the members. We requested legal advice from the Office of General Counsel related to this matter, and their interpretation was consistent with ours; however, they did acknowledge that past practice would dictate whether future cases could be calculated differently without being collectively bargained.

Recommendation to Finding 1 – 1

Going forward we feel the office needs to consistently enforce the rule that the date of election is the effective date for benefit calculations. Separately, the fund needs to work with legal counsel as needed to solve the past issues and determine if any corrections need to be made.

Police and Fire Pension Fund Response to Finding 1 – 1

Agree Disagree Partially Agree

The DROP processing is performed on a quarterly basis and procedures have consistently been applied. The Police and Fire Fund Board of Trustees established the procedures noted by the Council Auditor to obtain efficient and accurate processing of the DROP applicants, while maintaining the intent of the DROP legislation. To change the procedures based on the Council Auditor's recommendation would unduly harm the DROP retiree or unduly burden the PFPF staff, PFPF Advisory Board, and the PFPF Board of Trustees, as well as the Jacksonville Sheriff's Office, Fire Rescue Department, and the Employee Services Department of the City. We have consistently applied the policies and procedures relating to DROP election/eligibility.

Council Auditor Rebuttal to the Police and Fire Pension Fund Response to Finding 1 - 1

We agree with the Police and Fire Pension Fund that it is currently treating all members that fit the same criteria in the same manner. However, our issue as noted in the finding is with the application to the different groups. The calculation of years of service for eligibility to participate in DROP is done differently for a member with less than 20 years of credited service that reaches 20 years prior to the DROP begin date than a member with less than 30 years of credited service that reaches 30 years prior to the DROP begin date.

We disagree with the idea that this consistent interpretation and application of the law would require any additional work of the staff of the Fund or any other City Departments. Furthermore,

we disagree with the idea that this would be of harm to the DROP retiree since the individuals would be receiving benefits they are eligible for pursuant to the law.

Finding 1 – 2 *Error with Final Compensation Calculation*

We found that 1 out of the 58 final compensation amounts tested had an error resulting in an individual being paid \$1.76 too much per pay period. Section 121.201 (a) of the Municipal Code states that final compensation is the, "...average salary ... received by the member for the 52 pay periods immediately preceding the time of retirement..." For one individual selected for testing, it was the average of the 52 prior pay periods as of the next to last pay period prior to retirement. As of May 11, 2012, this resulted in a biweekly overpayment of \$1.71 for the base benefit and \$.05 for COLA with a net impact of \$40. This error will continue to accumulate.

Recommendation to Finding 1 – 2

The Police and Fire Pension Fund needs to correct this error. Furthermore, while this issue is rare, it needs to be corrected going forward since the process for converting an employee who does not participate in the DROP from active payroll to pension payroll is in error.

Police and Fire Pension Fund Response to Finding 1 – 2

Agree Disagree Partially Agree

This Finding relates to the one week lag issue in City payroll processing and we are reviewing and will have discussions with the City's Information Technologies Department (ITD) and the Fire Rescue Department. After that, we will determine if a correction is warranted.

Council Auditor Rebuttal to the Police and Fire Pension Fund Response to Finding 1 - 2

We agree that the one week lag issue in the City payroll was a contributing factor; however, the practice of calculating the final retirement benefits prior to the last payroll was the ultimate cause.

Finding 1 – 3 *Issue with Effective Retirement Date*

We found that 88 out of the 90 individuals tested had an issue with the effective DROP date, which is when a member begins participation in DROP. Pursuant to Section 121.113 (a) of the Municipal Code, members contribute seven percent of pensionable salary per pay period; however, per Section 121.209 (i) (2) of the Municipal Code, while participating in DROP a member must contribute two percent of pensionable salary. Furthermore, members who do not participate in DROP are eligible for pension benefits on the day after their last day worked so that they do not earn regular and pension pay for the same day.

We noted that for all 50 of the current Phase 1 DROP participants tested, each had an effective DROP date one day after the last pay day instead of the last day worked. Separately, we tested 51 individuals currently being paid pension benefits. We were easily able to obtain the last contribution and pay dates prior to entering Phase 1 of DROP (or retiring if a non-DROP member) for 40 individuals. Of the 40, 38 had an issue with the Retirement/DROP date. We did not further research the other 11 since the evidence was substantial enough already to prove this was an issue.

Based on the instances noted, this appears to be a systemic issue that existed prior to JaxPension and is mainly attributable to the one week payroll lag.

The impact of this is not simple. For those who participated in DROP, in basic terms the member was credited one week of additional service time, while contributing the reduced contribution rate of two percent (down from seven percent). This could result in a member being allowed to participate in DROP before or after their real eligibility period. For those that did not participate in DROP, they were either paid for a few extra or less days on their first pension paycheck than they should have been.

Recommendation to Finding 1 – 3

The Police and Fire Pension Fund needs to update the process and procedures surrounding the transition from regular active payroll to Phase 1 of DROP to eliminate an instance where an individual is contributing a reduced rate while being credited with regular service for purposes of calculating the effective date that DROP begins. The Police and Fire Pension Fund needs to work with legal counsel to determine how to handle the past problems.

Police and Fire Pension Fund Response to Finding 1 – 3

Agree Disagree Partially Agree

We are determining if Policy changes are needed to this complicated issue which are the result of the City's payroll system using a one week lag for most of their employees, although we note that that the number of zero week employees is declining through attrition. We are meeting with ITD to determine if they are able to prorate the pension deduction in the City's payroll system to avoid manual intervention by the PFPF staff. Manual intervention only increases the likelihood of inadvertent errors and lessens the internal control built in to the JaxPension system. We have consistently applied the policies and procedures relating to DROP election/eligibility.

Council Auditor Rebuttal to the Police and Fire Pension Fund Response to Finding 1 - 3

We understand the concerns raised by the Police and Fire Pension Fund as it relates to manual intervention; however, that does not mean the current practice is correct or should continue. The Police and Fire Pension Fund should work with the Information Technology Department to resolve this in a manner that does not require manual intervention. One consideration would be to switch Phase 1 DROP credits to a one-week lag that is consistent with active payroll.

Finding 1 – 4 *Issue with Pension Bonus Payment*

We found two pensioners were paid more than the allowable bonus amount. Two (out of 1,986 tested) were overpaid \$973 (out of \$1,843,990 paid) in fiscal year 2010/11. The bonus amount is supposed to be calculated by multiplying the number of months that the pensioner was receiving pension benefits during the fiscal year times the monthly base benefit amount times the bonus percentage (up to 3%). For the two exceptions noted, the bonus was incorrectly paid as though the new survivor was a survivor of an active pensioner who was receiving a pension benefit for the other months of the fiscal year and not a survivor of an active employee.

Recommendation to Finding 1 – 4

We recommend that the Police and Fire Pension Fund recover these funds.

Police and Fire Pension Fund Response to Finding 1 – 4

Agree Disagree Partially Agree

The \$973 overpayment to two survivors has been recovered. We have a request in to the City's Information Technologies Department to correct the program that calculates the payment in JaxPension. As a secondary check, the PFPF staff is compiling a running list of active employees that pass away during the year, so that a manual double check can be made for the deceased employees survivors' calculation.

OBJECTIVE 2

To determine whether refunds of employee pension contributions were correctly calculated and distributed.

Based on testing performed, the refunds of employee pension contributions were materially accurate and properly distributed. Our testing results are noted below.

Finding 2 – 1 *Underpayment of Refund*

Pursuant to Section 121.202 of the Municipal Code, members who terminate employment shall be refunded the contributions made by the employee to the plan without interest. We found two (or 4.65%) of the 43 members tested did not receive a full refund of all contributions made. In total, \$298 out of the \$487,454 tested was not refunded. These member contributions were overlooked due to contributions being made after the calculation of the member’s total refund was made.

Recommendation to Finding 2 – 1

We recommend the PFPF refund the remaining balances of the two individuals noted. We also recommend the PFPF create a policy on the timing of the calculation of contributions made to ensure all contributions will be included in the refund.

Police and Fire Pension Fund Response to Finding 2 – 1

Agree Disagree Partially Agree

We have refunded the \$298 to the two employees. We have instituted the policy that the pension deduction will be turned off in the City's payroll system before PFPF staff issues the refund. We are also meeting with ITD to lock out the capability of others so that the Employee Services Department can not turn on our pension deduction code once we have turned it off.

OBJECTIVE 3

To determine whether time service connections and military time service purchases were being properly calculated and that the members paid the correct amount owed.

Based on testing performed, we found significant issues with the calculation of final compensation for time service connections when portions of pensionable pay were only paid once per month. However, the other time service connections were materially accurate in the calculation of the amount of time eligible for purchase, calculation of the amount owed, and the collection of the amount owed.

Finding 3 – 1 *Issues with Calculation of Time Service Connections*

We found 12 (or 22.22%) of the 54 time service connections we tested had material errors. Specifically, the purchase price was wrong for 10 pensioners tested (one of which also had an incorrect adjusted pension date), resulting in a net underpayment to the fund of \$15,597. We also found one pensioner paid double the amount owed resulting in an overpayment of \$127 and another pensioner originally lacked the support needed to be eligible for time purchased. Overall, the fund is incurring additional future obligations without receiving full payment for those obligations.

While not the cause of all of the issues, the fact that certain incentive pay is paid once per month by Fire and Rescue does appear to be a contributing factor for most of the findings. Based on communication with the Police and Fire Pension Fund and their communications with the City Information Technology Division, if the pay period prior to the member coming in to apply for the time service connection is a pay period when they were paid this incentive pay, the cost was properly calculated. When the incentive pay was not included in the pay period prior to the calculation, the cost calculated was not accurate. While this is a contributing factor to the

system's calculation, the Police and Fire Pension Fund should have identified this error previously and taken corrective action at that time.

Recommendation to Finding 3 – 1

We recommend the Fire and Rescue Department look into changing the payment method of incentive pay from monthly to biweekly, ultimately allowing for a more uniform biweekly payment. Until then, when calculating the monthly salary to determine the time service connection amount owed, we recommend the bi-weekly payroll be scrutinized to include any pay that may occur once per month.

Police and Fire Pension Fund Response to Finding 3 – 1

Agree Disagree Partially Agree

While awaiting the response from the Fire Rescue Department, we are changing our policy for the Fire Time Service connection to include the last pay date of the month so that all the incentive pay elements are included in the calculation.

Fire and Rescue Department Response to Finding 3 – 1

Agree Disagree Partially Agree

The Fire and Rescue Department agrees to work with the Information Technology Division, Employee Services Department and International Association of Firefighters Local 122, to pursue changing the Oracle Payroll Systems payment method for some incentive pays from monthly to bi-weekly. This change would allow the Police and Fire Pension Fund to more accurately calculate the purchase price of a time service connection and ensure full payment of future obligations to the fund.

OBJECTIVE 4

To determine whether COLAs were computed and paid accurately.

COLA payments were materially accurate with the exception of one significant finding.

Finding 4 – 1 *Inaccurate COLA Payments*

We found the COLA paid to retirees was wrong for five of the 1,538 members tested. This resulted in a net overpayment of \$122,959 as of May 11, 2012. Specifically, one member was overpaid \$128,048 and four members were underpaid a net of \$5,089. We were unable to determine the exact cause of the error for the one in which the member was overpaid, but for the other four it appears to be issues with the system. More specifically, in two of the instances, the

system did not properly detect that the member was eligible for a COLA and in the remaining two instances there were issues with the switch to the survivor.

Recommendation to Finding 4 – 1

The Pension Office needs to correct these problems, research whether these same items would impact other pensioners and establish policies to reduce the risk of this reoccurring.

Police and Fire Pension Fund Response to Finding 4 – 1

Agree Disagree Partially Agree

We have refunded the four members that were underpaid and are collecting on a bi-weekly basis from the survivor that was overpaid. We reviewed the files for these individuals and the system did not calculate the initial COLA correctly. While a manual review of the COLA calculations was made by the Deputy Pension Administrator at the time, apparently the system errors were not caught.

ITD was unable to explain the system problems in the old pension system when these errors occurred. We have since performed a review using a new method of manual checking that utilizes EXCEL capabilities and will continue to use this type of manual checking for future COLA calculations made by the JaxPension system.

OBJECTIVE 5

To determine whether all pensions terminated were done so properly and determine whether the Pension Office has appropriate controls in place to detect and remove ineligible pensioners.

Based on testing performed we found numerous issues with the termination of pension benefits, such as errors in the transition from the original retiree to the survivor.

Finding 5 – 1 *Issues with Cut-Off/Transition of Pension Benefits*

We found 27 (or 28.72%) of 94 terminated pensioners tested had errors regarding the termination of pension benefits and if applicable, the transfer of benefits to the surviving spouse. We calculated a net underpayment of \$7,476 to terminated pensioners or surviving spouses. There are two issues that are causing problems.

One of the problems was caused by the practice of the fund to continue to pay a survivor the amount that was paid to the original retiree until all appropriate documentation was filed. This resulted in a manual calculation being needed to adjust for the amount that should have been paid

from the date the original retiree became deceased to when the pension payment was reduced to the applicable amount for the survivor.

The other problem was caused by the fund not remitting the last pension payment to the estate of the pensioner (if no surviving spouse) or the surviving spouse upon death if the ACH or check was rejected or sent back. Based on the fact that if the pensioner is alive at any point during the two week pay period they are entitled to the full benefit pursuant to Section 121.307 of the Municipal Code, these funds should have been remitted to the estate of deceased individual or the Florida Department of Financial Services.

Recommendation to Finding 5 – 1

When the fund becomes aware of the death of a pensioner, we recommend an immediate transition of benefits from the pensioner to the surviving spouse at the designated 75 percent rather than the current policy of overpaying benefits, then making manual adjustments to benefits for overpayments.

We also recommend the fund establish policies to send the funds to the estate of the deceased individual or the Florida Department of Financial Services when there are no eligible survivors.

Police and Fire Pension Fund Response to Finding 5– 1

Agree Disagree Partially Agree

We have initiated a change in our policies to reflect the recommendation to decrease the pension amount immediately upon recognition of a pension's death.

We have a policy to send the funds to the estate of the deceased individual and that has been followed. For those instances where there is not an estate, we are exploring legal avenues concerning the funds (which is usually the last bi-weekly pay) instead of remitting pension funds to the Florida Department of Financial Services.

OFI 5 – 1 *Improved Controls to Detect Deceased Pensioners*

The controls in place to detect deceased pensioners could be improved. The Police and Fire Pension Fund utilized annual affidavits and obituaries listed on a local news website to actively identify deceased pensioners. The affidavits are only processed once per year and could be falsified by an individual in an attempt to defraud the fund. The searching of obituaries online that the office actively performs identifies local deaths; however, not all members would have an obituary on the local news website. We do understand that in many cases the fund is also notified by friends or family members; however, it is not reasonable to rely on this as a safeguard. Due to all of these facts, we feel the controls in place to detect deceased pensioners could be improved.

Based on our communications with other pension funds, most funds utilize the Death Master File either directly through the Social Security Administration or indirectly through a third party

vendor to identify deceased pensioners receiving benefits. Not using the Death Master File could result in the Pension Fund making pension payments to ineligible people and the City contributing more to the fund than would otherwise be required.

Based on conversations, the Administrator of the Fund does not feel that the Master Death File will provide the Pension Office a greater benefit than the current methods used to detect deceased pensioners or that the file will increase the efficiency of the office.

Recommendation to OFI 5 – 1

In addition to current controls, the Pension Office should obtain a subscription to the Death Master File that allows them to check all pensioners at least four times a year for a trial basis of at least one year. This would cost less than \$5,000 and the cost could be split with the General Employees and Corrections Officers Retirement Plans as well. After the trial basis they can analyze the results and determine the best course of action to identify the proper control mechanisms.

Police and Fire Pension Fund Response to OFI 5 – 1

Agree Disagree Partially Agree

While our controls are adequate, we are always looking for ways that may improve our operation and are willing to participate with the subscription to the Death Master File on a test basis for one year on a proportionate cost basis with the General Employees Pension Plan, the Corrections Pension Plan, and the City's Risk Management Division.

SUPPLEMENTAL ISSUE

Supplemental Issue *Concerns Related to the Senior Staff Voluntary Retirement Plan*

On September 20, 2000, a separate pension plan was established by the Police and Fire Pension Fund Board of Trustees for the Administrator and Assistant Administrator of the Police and Fire Pension Fund. The plan was named the Senior Staff Voluntary Retirement Plan (SSVRP). There was language that allowed for other individuals to be added to the plan upon the approval of the Board of Trustees. In 2004, a third individual was approved to join the plan upon becoming employed by the Police and Fire Pension Fund.

The SSVRP brings up several legal and financial issues listed below that need to be considered and addressed:

- It is questionable whether the plan was properly authorized. The Police and Fire Pension Fund Board of Trustees approved the SSVRP; however, City Council did not. The City's

Office of General Counsel has stated the plan was not created legally and counsel for the Police and Fire Pension Fund Board of Trustees has stated it was legally created.

- To date there have been three members of this plan. All three members of the plan worked for the PFPF while also receiving pension benefits from a City sponsored pension plan. These three individuals were paid via a separate payroll service company by the fund unlike all other fulltime employee of the fund who are paid via normal City payroll. It is questionable whether the individuals could receive their other City Pension Benefits while they were accruing time in the SSVRP. Sections 120.209 (e) and Section 121.105 (a) of the Municipal Code have language that appears to state this is not permissible if the participants are deemed employees of the City. If these individuals are not deemed City employees since they are employed by the Police and Fire Pension Board of Trustees, it is questionable how other employees of the office are allowed to participate in the General Employees Retirement Plan.
- The Actuarial Reports for this separate plan were not being submitted to the Department of Financial Services prior to the October 1, 2011 actuarial report per PFPF. Section 112.63 (2) of the Florida Statutes requires the pension plans covered by that chapter have actuarial reports submitted to the Department of Financial Services. There is a letter from the Fund's attorney that appears to state these requirements do not apply since the Fund is not a "government entity" as defined in Section 112.625 (5) of the Florida Statutes. However, based on the written guidance we have received from the Office of General Counsel, it appears this section applies to this pension plan.
- The Actuarial Reports were not prepared every three years. Section 112.63 (2) of the Florida Statutes requires the pension plans covered by that chapter have actuarial reports prepared at least once every three years. There is a letter from the Fund's attorney that appears to state these requirements do not apply since the Fund is not a "government entity" as defined in Section 112.625 (5) of the Florida Statutes. However, based on the written guidance we have received from the Office of General Counsel, it appears this section applies to this pension plan.
- The assets of the SSVRP were included with the assets of the Police and Fire Pension Plan on the actuarial report up until the report dated October 1, 2011. This caused the assets available to cover the pension liability of the Police and Fire Pension Plan to be slightly overstated, if the plan and associated liability is legal.
- As of March 31, 2012, the separate plan was never disclosed in the notes to the financial statements for the Fund or the City. This was an omission within the notes of the pension liability that exists to the Fund and the City, if the plan is in fact deemed legal. We do note that for the year ended September 30, 2012, the separate plan was disclosed in the notes to the financial statements for the Fund.

Recommendation to Supplemental Issue 1

We recommend that all financial and legal issues be addressed by the appropriate parties and that the reporting requirements and representation be corrected going forward.

Police and Fire Pension Fund Response to Supplemental Issue 1

Agree Disagree Partially Agree

This is a legal issue.

The City refusal to issue payroll checks to the appointed Executive staff required the use of a payroll service. This is memorialized in the Financial Services Agreement provided to the City Council auditor dated September 1, 1991 and the amended Financial Services Agreement dated June 20, 2003. We agree the issues need to be addressed and resolved.

In the Memorandum issued on December 16, 1996, a copy of which is attached, Deputy General Counsel Steven Rohan advised:

"(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 Peronnel 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 Genearl 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 reasonable 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 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 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 20.205 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

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.*

Council Auditor Comments to the Police and Fire Pension Fund Response to Supplemental Issue 1

We agree this is a legal matter. We are raising concerns regarding this separate plan that need to be properly addressed. The Police and Fire Pension Fund response only addresses one small part of our write-up. They do raise points that may need to be taken into account as the issue is addressed; however, they are not the only facts that need to be addressed and would not appear to impact the legality of the plan or how it was represented in the notes to the financial statements or the actuarial report for the Police and Fire Pension Plan.

We believe this matter needs to be properly addressed as soon as possible for the benefit of all parties involved.

OVERALL CONCERN

The Mayor's Office and the City Council need to continue to pursue changes in State Law to address the unconscionable structure of the Police and Fire Pension Fund Board of Trustees. The Police and Fire Pension Board of Trustees is responsible for managing the assets of the Police and Fire Pension Plan while the City is responsible for funding the liabilities of the Police and Fire Pension Plan. Stated simply, the Board controls pension assets while the City retains the liability to fund pension payments.

We appreciate the assistance and cooperation we received from the Police and Fire Pension Fund throughout the course of this audit.

Respectfully submitted,

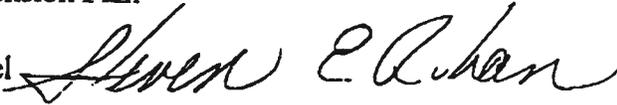
Kirk A. Sherman, CPA

Audit Performed By:

Kim Taylor, CPA
Brian Parks, CPA
Aaron Wilkins

**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 
RE: Police & Fire Pension Fund Employees
DATE: December 16, 1996

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

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.

(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

- (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

(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

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