



## SUMMARY TO THE BOARD OF TRUSTEES SPECIAL MEETING

Friday, September 3, 2021

11:00 A.M.

City of Jacksonville Police and Fire Pension Fund  
1 West Adams Street Suite 100, Jacksonville, FL 32202  
Richard "Dick" Cohee Board Room

### Board of Trustees

Assistant Chief Chris Brown, Chair  
Nawal McDaniel, Secretary  
Cpt. Michael Lynch  
Richard Patsy  
Terry Wood

### Staff

Timothy H. Johnson, Executive Director – Plan Administrator  
Steve Lundy, Deputy Director  
Chuck Hayes, Pension Benefits Manager  
Bob Sugarman, Fund Counsel  
Lawsikia Hodges, Office of General Counsel

### Guests

"Chuck" via ZOOM  
Randall Barnes, via ZOOM  
Kelly Dobson, IAFF Local 122  
Sean Granat, OGC, via ZOOM  
John Keane via ZOOM  
"MCE" via ZOOM  
Jon Phillips, OGC  
Cynthia Poland via ZOOM  
Keith Powers, JFRD, Director of Fire and Rescue  
Randy Reaves, FOP 5-30  
Tom Stadelmaier, via ZOOM  
Donald Tuten, Retired JSO  
Kurtis Wilson, Retired JFRD  
Randy Wyse, President, IAFF Local 122

### Notice

Meeting Agendas and Summaries are available on our website at [jaxpfpf.coj.net](http://jaxpfpf.coj.net). For additional meeting documents, please contact Steve Lundy, Custodian of Public Records for the City of Jacksonville Police and Fire Pension Fund at 904-255-7373 or [SLundy@coj.net](mailto:SLundy@coj.net) to file a public records request.

Pursuant to the American with Disabilities Act, accommodations for persons with disabilities are available upon request. Please allow 1-2 business days notification to process; last minute requests will be accepted, but may not be possible to fulfill. Please contact Disabled Services Division at: V(904) 630-4940, TTY-(904) 630-4933. If any person decides to appeal any decision made with respect to any matter considered at this public meeting such person will need a record of proceedings, and for such purpose such person may need to ensure that a verbatim record of the proceedings is made at their own expense and that such record includes the testimony and evidence on which the appeal is based. The public meeting may be continued to a date, time, and place to be specified on the record at the meeting. Additional items may be added / changed prior to meeting.

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Summary

I. Public Speaking

Don Tuten addressed the Board of Trustees. He discussed his 31-year career in law enforcement leading to retirement with the Jacksonville Sheriff's Office. He shared his Christian faith. He said he performed his due diligence by reviewing the OGC opinion on reemployment before taking a job with JEA as a retiree member of the PFPF. He said that he is embarrassed by each Trustee for calling his integrity into question. He said he feels certain Trustees may have political agendas towards himself and Kurt Wilson. He asked the Board of Trustees to not pick and choose which OGC opinions they deem politically beneficial, and to be an equitable Board to all of its members who wish to work for independent agencies of the City.

Kurt Wilson addressed the Board of Trustees. He discussed the events leading to accepting a job with JEA. He also discussed the affidavit which included a letter including JEA in the definition of 'City'. He said a City Councilmember said a Trustee called him and said that if JEA hired him, the Trustee would make an example out of JEA and Kurt Wilson in the news. He said he feels this reemployment discussion has not been held in good faith as it relates to him. He said the Board's next steps would determine his legal course of action.

Jody Brooks, the Chief Administrative Officer at JEA addressed the Board of Trustees. She said she is present to answer any questions the Board may have on JEA's view on reemployment. She said she personally inquired about reemployment, and in the Linn opinion, he states PFPF retirees employed by JEA can continue to receive their PFPF pension benefits. JEA employed two pensioners with assurance their JEA employment would not interfere with their pension. They have dutifully served the City, and are true assets to JEA.

II. Application for Time Service Connection

- a. *BILODEAU, Michael D., Fire Battalion Chief; 12 months St. John's County Fire Department time; \$25,231.22*

Chuck Hayes said this member's time service connection is on the agenda because he wants to enter DROP in October and wants to pay for the time with his Empower funds. There is not enough time to administer the purchase if this was approved in two weeks rather than today.

Chris Brown added that this would be approved contingent on Advisory Committee approval.

**Michael Lynch made a motion to approve the Application for Time Service Connection, seconded by Terry Wood. The vote passed unanimously.**

III. Reemployment Discussion

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Timothy Johnson covered his slides, “Reemployment: Review of Police and Fire Pension Fund Policy and Procedure”. He said he wanted to talk about the background of the reemployment issue, and to tee up discussion. He said that in his five years working at the PFPF, he has not needed to administer a specific reemployment case. He covered the slides of his presentation:

- Ordinance Code Sec. 121.105
  - (a) Any Police and Fire retiree who has been reemployed by the City shall cease to receive a pension or pension entitlement during such period of reemployment.
- January 5, 2017: Daragjati Opinion
  - “If a rehired retiree is determined to be an “employee” rather than an “independent contractor”, and does not fall within the identified positions in Ordinance Code Section 121.105, the Board of Trustees must stop the member’s benefit during the period of re-employment.”
- June 14, 2017: Draft Affidavit
  - “I am not currently employed by the consolidated government of the City of Jacksonville, Florida, which includes, but is not limited to, any of its offices, departments, independent authorities or agencies,
  - Excerpt from the July 12, 2017 Advisory Committee Discussion: James Holderfield asked independent agencies of the City were included on the draft affidavit.
  - It matters because of the Consolidated Government. These agencies are included under the word ‘City’ under the law.
- Current Affidavit
  - Final Revised Affidavit August, 2018: “I have not been employed with the City of Jacksonville within the past twelve months and I (or an entity or company owned by me) have not been under contract with the City of Jacksonville within the past twelve months.”
- December 10, 2019: OGC Court Filing
  - “16 Pursuant to section 121 105 Upon reemployment, Keane should have ceased receiving his police and fire pension payments.”
- May 11, 2021: Linn Opinion
  - “The requirements under Sec. 121.105(a), which prohibits a retired City police officer or firefighter from receiving pension benefit payments from the PFPF during periods of reemployment with the City, would not apply to periods of employment with JEA.”
- In Summary
  - Interpretations vary and change;
  - We haven’t had to take action until now;
  - Two members need to know
  - All members deserve know their rights and benefits
  - The Board sets policy and guides staff
  - Lawsikia Hodges, Bob Sugarman and I are here to answer your questions

Timothy Johnson summarized and said that, if asked to administer a reemployment case, between 1990 and 2017, we would have given one answer. If asked between 2017-2019, we would’ve given another answer. If asked between 2019-2021, another answer. And after the Linn opinion in 2021, we would have given another answer. He said these two members deserve a consistent answer, as do all members.

Lawsikia Hodges presented the Office of General Counsel’s view of the reemployment issue, and made the following points:

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- JEA is an independent agency of the City, and therefore not affected by 121.105.
- The Charter, Section 18.07 defines Consolidated Government, and Independent Agencies;
  - "Independent agencies" means the Duval County School Board, the Jacksonville Port Authority, the Jacksonville Transportation Authority, the JEA, the Jacksonville Downtown Investment Authority, and the Jacksonville Police and Fire Pension Board of Trustees.
- In a recent case, JEA was ruled independent of the City.
- The Linn opinion is in line with the law.

Bob Sugarman gave his thoughts on the Reemployment issue, and made the following points:

- For IRS code purposes, JEA and the City are separate. There is no 'in service distribution'.
- Sugarman & Susskind was asked by OGC for its thoughts on the Linn opinion, and said it is supportable and reasonable, and would have reached the same conclusion on the IRS provisions.
- Sugarman & Susskind was asked to sign the Linn opinion, but declined noting that JEA is not a client, and was not asked by the Board of Trustees.

The Board of Trustees began discussing their thoughts on the reemployment issue.

Terry Wood suggested looking at the original City Charter to define 'The City'.

Michael Lynch said he believes the evidence is clear, and that the Board of Trustees should be focused on 121.105. JEA is not listed as acceptable reemployment.

Chris Brown asked Lawsikia Hodges to clarify the 2019 court filing by OGC.

Lawsikia Hodges detailed the court filing, and mentioned the 1937 special act creating the Fund, and an amendment in 1950. She said the filing was a mistake, and the referenced sentence is not the opinion OGC gave – OGC believes JEA is not part of the City.

Nawal McDaniel discussed her views of the reemployment issue. She said she focused on Section 121. JEA is not listed in the exceptions for reemployment in Chapter 121, so, is employment by JEA considered reemployment by The City? There is no specific definition of 'The City' in Chapter 121, so you have to go back to the definitions that apply to the entire Code. There is a distinguishing between The City and its Independent Agencies.

Chris Brown said that this is done all the time – the PFPF administered the Children's Benefit for a long time, we asked OGC, and then did a lot of great work to fix it. The big issue is in 2019, with OGC's statement contradicting this, which is now admitted as a mistake. He said he believes the interpretation is solid: if you are reemployed by the City, your pension stops, and this does not include independent agencies.

Richard Patsy said that in all the interpretations he sees, "The City" does not include independent agencies. He said that is how he interprets it.

Chris Brown said that, as Timothy Johnson explained, this issue hasn't come up before, and the PFPF has received various opinions over 25 years.

Michael Lynch said he is confident how we arrived to where we are. He discussed the contradictory opinions, contractors, and a pensioner working for the City after retiring from JEA. This needs to be addressed.

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Chris Brown agreed and said clarity is needed in the municipal ordinance for future Boards. This would reduce confusion.

The Board of Trustees discussed the exceptions to reemployment as written in Chapter 121 of the Ordinance Code, and suggested 121.105 should be clarified through collective bargaining.

Randy Wyse said that he would be willing to sit down with the City, and would accept input from anyone who would like to discuss this issue. He asked the Board of Trustees to interpret Chapter 121 as it is written. He said he is good with the Board putting off any action until changes take place. He said the Union is more than happy to look at any aspect to fix the problem.

Lawsikia Hodges said that the GEPP has a specific definition of 'The City', but the PFPF does not. We must refer to the general definition that applies to the entire Code – which applies when there is no specific definition.

Chris Brown said that this is consistent. JSO policy is the same – if there are no specifics, you have to go broader. There is no specific definition of 'The City' in Chapter 121.

Randy Reaves said he is in lock step with the IAFF, and agrees with what Randy Wyse previously said. The FOP is ready to negotiate.

Nawal McDaniel asked if the Board of Trustees would take action today, or at its next meeting.

Chris Brown said he has enough information to make a decision. He said that he is not critical of OGC, but there are time when the Board of Trustees needs independent counsel, and that sometimes his comments are blown out of proportion. He said he respects OGC's work, and has relied on it for years. He said the Linn opinion has support from Sugarman & Susskind, and that is the way he would side today. This does not mean the unions should not sit down and negotiate clarifications to the Code.

Bob Sugarman said that when the negotiations begin, answers to the reemployment issue, and other clarifications should be added concerning 415 limits, DROP and COLA clarifications.

Chris Brown said that he believes that the Board should interpret things how they are written, but likes the idea of waiting for clarification before taking action.

The Board of Trustees continued discussing interpreting 121.105.

Michael Lynch said he is agreeable to tabling a decision on interpreting 121.105, and that any decision would be prospective (not retroactive) regarding any affected members of independent agencies.

**Michael Lynch made a motion to table the decision on 121.105 regarding these two members until the first regular Board of Trustees meeting in January, with the understanding that the decision requiring stopping pensions would not be retroactive. Seconded by Terry Wood. The vote passed unanimously.**

**The Board of Trustees rescheduled the October regular Board meeting for Tuesday, October 19<sup>th</sup> at 9:00 A.M.**

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IV. Adjournment  
12:51 P.M.

Nawal McDaniel, Board Secretary

**Summary Prepared By:**

Steve Lundy, Deputy Director  
City of Jacksonville Police and Fire Pension Fund

**Posted:** 09/09/2021

**To be Approved:** 09/17/2021