

MINUTES
Policemen's Pension and Trust Relief Fund
Thursday, April 9, 2009
9:00 a.m.

On Thursday, April 9, 2009 at 9:00 a.m., a meeting of the Board of Trustees of the Policemen's Pension and Relief Fund of the City of Little Rock, Arkansas was held in the Sister Cities Conference Room at City Hall.

PRESENT:	Bruce Moore	-Chairman
	Farris Hensley	-Secretary
	Sara Lenehan	-Treasurer
	Mike Lowery	-Member
	Lee Harrod	-Member
	Brad Furlow	-Member
	Albert Miller	-Member

ABSENT: None

Also present were Mr. Larry Middleton and Mr. Bo Brister of Stephens Capital Management (Financial Consultants for the Fund), Mr. John Peace of Dover Dixon Horne Law Firm (Legal Consultants for the Fund), Mr. Roger Smith, (Government Relation Lobbyists for the Fund), Mrs. Kathy Lindsey (Pension Fund Administrative Staff), and Mr. Jake Sandlin with Arkansas Democrat Gazette.

Mr. Moore called the meeting to order at approximately 9:07 a.m., certifying that a quorum of the Board was present, and that the media had been properly notified in a letter of April 6, 2009 to the Arkansas Democrat-Gazette.

Copies of the March minutes had previously been submitted to Board members. Following their review, Mr. Harrod made a motion to approve them as submitted. Mr. Miller seconded the motion and it passed unanimously.

Mr. Middleton gave a March 2009 financial report, and said that on March 31 the market value of the total Fund was \$43,722,675. This represents an increase in the account balance of \$191,015 since February 28, 2009. The component of this change was income of \$151,650. There were net contributions/withdrawals of (\$1,253,431). Additionally, \$769,390.06 was held in the Metropolitan Bank Checking Account. The Funds overall market rate of return for the month of March 2009 was; 2.66% and a negative (7.40%) year to date.

Mr. Middleton and Mr. Brister reported that there had been improvement in some of the financial stocks. Positive momentum began in March, and general confidence currently appears to be improving. Mr. Middleton explained that they have selectively liquidated some international equity positions during recent financial market rallies.

Mr. Smith reported that the Governor has now signed the following Bills; A Qualified Domestic Relations Order (QDRO) Bill, (Act 31), a Bill to allow confiscated goods to be sold via the internet,

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(Act 32), a Bill that deals with ethics reporting for members of Local Municipal Police Pension Funds, and a Bill to preserve current revenue streams when Local Municipal Fire and Police Pension Funds consolidate with the Local Police and Fire (LOPFI) State Pension System.

Mr. Smith reported concerning Bill SB178, and said that it had passed out of Committee on two occasions, and was first referred back to the Committee for reconsideration by Senator Steve Faris. It passed Committee a second time, however was then referred to Interim Study by the State Senate, and therefore could not be brought up again. He (Mr. Smith) explained that upon direction from their local Board, many members of the Little Rock Police Pension Fund had contacted various State Senators, Representatives, and attended Committee meetings in support of the Bill. If passed, the Bill would have provided cost of living adjustments (COLA) for local Fire and Police Pension Funds that consolidate with LOPFI.

Mr. Hensley explained that although the Bill did not pass both Houses, and was not enacted into Law, significant gains were accomplished, and a lot of attention was focused on the problem of inadequate funding for local Police and Fire Pension Funds. He said that "ground work" was laid to continue work on future legislation.

Mr. Moore spoke in regard to SB178, and said that in the future the Pension Board needs to engage in a process of formal discussion, and endorsement of proposed legislation. He said that among other things it would give the City of Little Rock an opportunity to offer assistance during the Legislative process.

Mrs. Lenehan agreed with Mr. Moore, and said that she did not recall the Board formally endorsing the Bill.

Mr. Smith said that language for the final Bill was not completed until just prior to it being formally introduced to the Joint Retirement Committee; however he was certainly very clear that the Pension Board had authorized him to actively promote the legislation during months of prior Board discussion relating to COLA legislation.

All Police Members of the Board spoke in regard to SB178, and indicated that during months of prior discussion during Pension Board meetings concerning plans to propose COLA legislation, they were all very clearly aware that the Board had firmly committed to formally supporting such legislation as was provided for in Senate Bill 178.

Mr. Smith then explained the Interim Study process in regard to SB178, and said the if the Board wishes to continue pursuing the legislation he would need authorization to contact the Senator who had previously sponsored the Bill, and was Chairman of the Joint Retirement Committee. The Senator could then begin a process that would allow work to be done on the Bill during the Legislative Secession interim.

Mr. Furlow made a motion authorizing Mr. Smith to continue to advocate and work through the Interim Study process on all matters relating to the content of Senate Bill 178. Mr. Hensley seconded the motion and it passed unanimously.

Mr. Peace reported concerning the past benefit increase lawsuit, and said that Mr. Dean Overstreet had completed the stipulation of facts, that have now been approved by Plaintiffs' attorneys. He said that the next step would be to file a legal brief on behalf of the Pension Fund, at which time affidavits would be needed from Mr. Farris Hensley, Mr. David Clark, Mr. Jody Carreiro and possibly Mr. Roger Smith. After the brief is filed, the Judge will then determine if a factual hearing will be needed, or if a ruling can be made based on the stipulation of facts, and briefs.

Mr. Peace reported to the Board that a formal request had been received from Mrs. Janet Wilson asking that the Board consider her child who is over the age of eighteen (18) years for disability benefits; however he (Mr. Peace) explained that a letter is still needed from a physician certifying that the child has a permanent disability. He recommended that the Pension Administrative Staff contact Ms. Wilson in regard to a physician certification. The matter was then tabled until May.

Mr. Peace then reported concerning the City of Little Rock's liability for benefit payments should there ever be a shortage of funds available. He explained that during his research, he had reviewed two previous Arkansas cases, and although they first appeared to be supportive of a position that the City could possibly be liable for benefits in the event of a funding shortage, upon closer examination he did not think they would be of benefit. The first case did not appear applicable to a Municipal Pension Fund such as that of Little Rock, and the second appeared to indicate that a situation such as the Little Rock Police Pension Fund does not rise to constitute a contractual obligation. Mr. Peace said that he also reviewed two previous Arkansas Attorney General (AG) opinions, and they basically opinioned that a Municipality is not liable in the event of a funding short fall. He (Mr. Peace) then explained that although it is very problematic, and he does not know how it would be implemented, Arkansas Statute 24-11-416 states that if there is not sufficient money to pay full benefits, then beneficiaries would receive a pro rata share of available funding. When asked by Board members regarding previous case law outside the state of Arkansas, he (Mr. Peace) said that there is case law in other states that establishes the fact that municipalities are responsible for pension benefits, however he believes that we would be dealing specifically with Arkansas State Statutes.

Mr. Hensley told the Board that he was very aware of the State Statute referenced by Mr. Peace, however was more concerned with previous case law in this state, as well as other states, and questioned how the situation in other states where previous case law does exist, differs from that of Arkansas. Additionally, he (Mr. Hensley) said that the situation in Little Rock may be unique somewhat, because when Police Officers were hired they were told that one of their benefits would be to receive a specific pensions upon retirement. He explained that in the late Nineteen Thirties (1930's), State Statutory authority to create Municipal Police and Fire Pension Funds was established, therefore relatively a short time later the Little Rock Police Pension Fund was created. However, unfortunately there was no legal requirement established at the time for the City of Little Rock to fully fund it, and unlike other Pension Funds that city employees are members of, the City failed to do so. In Nineteen Seventy Seven (1977), the Little Rock Police Pension Fund filed a lawsuit against the City of Little Rock alleging that special Arkansas Legislation had been created to exempt only them, the

(City of Little Rock) from having to pay ten percent (10%) of collected fines and forfeitures. Then, during depositions take under oath, Ms. Katherine Hinshaw who was the time Executive Director of the Arkansas Fire and Police Review Board (PRB) testified that in regard to their finding status the Little Rock Police Pension Fund was in the bottom ten percent (10%) of all Police and Fire Pension Funds within the State of Arkansas. Another deposition while under oath was taken from, then State Senator Ralph Patterson who testified that he had been in contact with an unnamed Little Rock City official who had asked him to selectively have Little Rock, the only City in Arkansas statutorily exempted from paying ten percent (10%) of fines and forfeitures. Mr. Hensley further explained that in 2008 the Little Rock Police Pension Board found that the City of Little Rock had again, since at least nineteen ninety five (1995) been failing to contribute ten percent (10%) of probation fees that are part of fines and forfeitures. Mr. Moore then immediately agreed to begin escrowing the appropriate amount of probation fees, and subsequently agreed pay ten percent (10%) of the above referenced fees for the past three years, in an amount of approximately \$63,000.00. However, no commitment was made for the approximate eleven (11) remaining years.

In summary, Mr. Hensley said that during the past seventy-five (75) years the City of Little Rock has never contributed enough to full fund its Police Pension Fund, because there was no legal requirement to do so. He explained that even though there was not a legal requirement, there certainly was, and currently remains an absolute ethical and moral obligation to do so. Then, to exacerbate the existing problem, he (Mr. Hensley) said that he believes that the City of Little Rock has clearly established over relatively a long period of time an obvious pattern and practice of failure to fully fund with the portion of revenues that were required of them by State Statute, and violated State Law each and every year in doing so. He closed by stating that he does not necessarily blame anyone currently in City Government, however now certainly is time to for the City to “step up to the plate”, and correct the problem “once and for all”.

When specifically asked by Mr. Harrod, Mr. Peace explained that the one previously referenced prior Arkansas case could possibly be used to support the Pension Funds position; however the other prior case and AG opinions would tend to be contrary in nature.

During the May meeting a motion had passed directing Mr. Peace and a Stephens Financial representative to address the City of Little Rock Board of Directors, and present to them financial information in regard to declining Pension Fund assets, thus generally summarizing the Pension Fund’s over-all situation.

At the current meeting, Mr. Hensley made a motion to include Mr. Roger Smith in the presentation to the City of Little Rock Board of Directors, and for him to present them with a historical perspective of the Fund, and request that they pay to the Fund ten percent (10%) of probation fees back to 1995. Also, for him to request that a process immediately began to determine how they are going to fully fund the Police Pension Find. The motion received a seconded by Mr. Furlow.

During discussion, Mr. Moore asked that when addressing the City of Little Rock Board of Directors, for Mr. Peace to inform them that as soon as the City was made aware that all fines were not being paid, he (Mr. Moore) authorized the appropriate amount of funds representing ten percent (10%) of future probation fees to immediately be escrowed, and subsequently to pay the past three (3) year

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sum total, in the amount of \$63,066.35. He also asked that Mr. Peace inform the City Board of his legal opinion to the Pension Board in regard to their liability for pension benefits.

Mr. Furlow told the Board that he believes Mr. Peace should now research matters relating to the Local Pension Fund issue, verses the State Fire and Police Pension Fund System (LOPFI). He said that when LOPFI was created in 1983, future funding for Old Local Pension funds became much more limited, and that the City of Little Rock paid a much smaller percentage of pay roll for the Old Fund members than was required on the new LOPFI Fund members, therefore the Little Rock Police Pension Fund is now dealing with a very serious financial situation that requires assistance from the City. Additionally, he said that in his opinion Mr. Peace should not be giving his legal opinion to the Little Rock City Board, because that is the job of the City Attorney.

Mrs. Lenehan said that although there is not a legal requirement for the City of Little Rock to fully fund the Pension Fund, there are dedicated sources of reoccurring revenue streams that the LOPFI pension system does not have. They include a dedicated portion of county property tax, insurance premium tax, a percentage of fines, and forfeitures.

Both Mr. Harrod and Mr. Lowery questioned different aspects of the legal opinion, and concluded that providing a legal opinion to the City Board of Directors is a function of the City Attorney.

Following discussion, a vote was taken on the previous motion, and it passed unanimously with an exception of Mrs. Lenehan who abstained from the vote. Mr. Moore told the Board that he would attempt to schedule a time for the presentation during a May 2009 Board of Director Agenda meeting.

Mr. Moore provided a written report to the Board regarding the past three (3) years of probation fees. The report indicated that the District Traffic Court had been contributing an appropriate amount during the entire period of time, however the District Criminal Court, and District Environmental Court had not. Mr. Moore explained that by the end of May, 2009 he will have transferred \$63,066.35, representing ten percent (10%) of probation fees from both of the above referenced courts, to the Police Pension Fund account.

Mr. Harrod questioned the above referenced report, and how the appropriate amount of probation fees were collected from District Traffic Court, but were not collected from the other two District courts systems. Following a brief discussion, Mr. Harrod requested that a detailed reporting of District Traffic Court probation fees collected, dating back to 1995 be provided to the Pension Board.

Mrs. Lenehan reported concerning a motion passed during the March meeting to provide the Board with a complete accounting report of probation fees collected, dating back to 1995. She said that it would take some time due to information contained in previous accounting systems that have since been archived.

Mr. Harrod said that he had previously seen an article in the Arkansas Democrat Gazette relating to Tax Increment Funding (TIF) districts in the City of North Little Rock, and explained that

allegations had been made in regard to the funding being inappropriately used, thus reducing the flow of property tax revenues to the School District. Due to the flow of some Pulaski County tax revenues to the Police Pension Fund, Mr. Harrod inquired of Mr. Moore concerning TIF districts within the City of Little Rock. Mr. Moore told the Board that the City of Little Rock has only one TIF district located at the River Port, opposed to North Little Rock who currently has several of them. He (Mr. Moore) explained that the State TIF Legislation allows for public structure improvements within the district, and said that the City of Little Rock is very careful to operate appropriately within the TIF district.

Mrs. Lenehan submitted copies of the un-audited balance sheet report for March 31, 2009. Losses to the plan year-to-date through March 31, 2009 were (\$5,893,407). The report indicated that as of March 31, the total account fund balance was approximately \$44,482,736 including DROP. The net gain for the month of March was \$169,395.

Also submitted were copies of the March 2009 expense and legal fee report. Total expenditures excluding benefit related expenses were \$7,415.17 for the month of March, and \$13,934.29 calendar year through March 31, 2009. Legal fees totaled \$9,000 year to date through March 2009.

Following review of the March financial and expense reports, Mr. Furlow made a motion to approve them as submitted. Mr. Hensley seconded the motion and it passed unanimously.

Mr. Hensley made a motion to approve the retirement application of Mr. Roger Wallis, effective April 30, 2009 in the monthly amount of \$1,962.03. The motion was seconded by Mike Lowery, and passed unanimously.

Mrs. Lenehan told the Board that due to information received from Mr. David Clark in regard to procedural changes recently made relating to the calculation and certification of DROP interest by the Arkansas Fire and Police Pension Review Board (PRB), she had authorized DROP interest statements to indicate a zero percentage (0%) interest rate amount, with a notation that the correct amount is yet to be determined by the Local Board. She explained that the action was taken to avoid a risk of LOPFI, and the Local Police Pension Fund from losing any insurance premium tax funding. Following a brief discussion, the matter was tabled until May, due to the length of the current meeting.

Mrs. Lindsey informed the Board that no nominations were received for position one (1) currently held by Mr. Hensley, and position three (3) currently held by Mr. Harrod. There were two (2) nominations received for position five (5) current held, and being vacated by Mr. Miller. Those nominations were that of Mr. Rusty Watson, and Mr. David Rowan. Mr. Furlow made a motion to approve a sample ballot previously submitted by Mrs. Lindsey. Mr. Lowery seconded the motion and it passed unanimously. Ballots will be mail to all members of the Fund, and must be received back in the Pension office by to an established deadline, just prior to the May meeting.

Mrs. Lenehan reported to the Board that a working taxpayer credit was one of President Obama's stimulus plan provisions. The tax credit implemented a change in the payroll tax withholding tables, but not a change in the actual tax liability of retired individuals. The issue is important to retired individuals because starting with the April pension benefit checks; a change will be noticed in the net payment amount, because it is a working taxpayer credit, and although it changes the amount of tax

withholding, it is a “working tax credit”, and does not apply to retired individuals. The end result would be that less taxes would be with held, during the year, however at year-end the individual’s tax liability would not be reduced, therefore an additional tax payment might be required. She explained that any member who would like to keep their monthly tax with holding at their previous level should contact the pension office and a W-4P form can be initiated to avoid the potential problem.

Upon conclusion of Pension Board business, Mr. Hensley made a motion to adjourn the meeting. Mr. Harrod seconded the motion, and meeting adjourned at approximately 11:13 a.m.

Respectfully Submitted,

Farris Hensley