



SUMMARY TO THE REGULAR BOARD OF TRUSTEES MEETING

Friday, August 20, 2021

9:00 A.M. – 11:16 A.M.

City of Jacksonville Police and Fire Pension Fund
1 West Adams Street Suite 100, Jacksonville, FL 32202

The next regular Board of Trustees meeting will be held Friday, September 17, 2021 at 9:00 A.M.

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
Kevin Grant, Finance Manager
Chuck Hayes, Pension Benefits Manager
Randall Barnes, Fund Treasurer – via ZOOM
Jordan Cipriani, RVK, Investment Consultant – via ZOOM
Kevin Schmidt, RVK, Investment Consultant – via ZOOM
Jonathan Kowolik, RVK, Investment Consultant – via ZOOM
Lawsikia Hodges, Office of General Counsel – via ZOOM
Bob Sugarman, Fund Counsel – via ZOOM
Pete Strong, GRS, Fund Actuary – via ZOOM

Guests

Chuck Baldwin, IAFF Local 122 – via ZOOM
Kelly Dobson, IAFF Local 122
James Holderfield, JSO, Advisory Committee Chair
John Keane – via ZOOM
Brennan Merrell – via ZOOM
John Phillips, Office of General Counsel
Randy Reaves, FOP 5-30
Lindsay Saienni, FIN News – via ZOOM
Tom Stadelmaier, COJ – via ZOOM
Donald Tuten
Kurtis Wilson
Randy Wyse, President IAFF Local 122
Steve Zona, President, FOP 5-30

Notice

Meeting Agendas and Summaries are available on our website at 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 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.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Summary

I. Pledge of Allegiance

II. Invocation

Timothy Johnson gave the invocation.

III. Moment of Silence

Thomas M. Barber, Active Fire Captain
Donald J. Barnes, Retired Police Officer
John H. Bishop, Retired Fire Lieutenant
Russell D. Brunson Jr., Retired Police Officer
Joan Hay, Retired Police Officer
Richard L. Henderson, Retired Firefighter
Donald H. Jacques, Retired Police Officer
William B. Jones, Retired Police Sergeant
William H. Kearney, Retired Police Officer
Daniel H. LaWall, Retired Police Captain
Tracy Y. Platts, Retired Police Officer
James F. Tuten, Retired District Chief
Lindsey Williams, Retired Fire Lieutenant

IV. Public Speaking

None.

V. Consent Agenda Items 2021-08-(01-12)CA

Richard Patsy moved to approve the consent agenda, seconded by Terry Wood. The vote passed unanimously.

2021-08-01CA Meeting Summaries to be Approved

1. Summary to the Board of Trustees Meeting of June 18, 2021
2. Summary to the Board of Trustees & FIAC Manager Update of August 3, 2021

City of Jacksonville Police and Fire Pension Fund
 Summary to the Regular Board of Trustees Meeting of
 Friday, August 20, 2021
 9:00 A.M. – 11:16 A.M.

2021-08-02CA Disbursements

The listed expenditures in DISBURSEMENTS A & B have been reviewed and deemed payable. The Police and Fire Pension Fund Finance Manager certifies that they are proper and in compliance with the appropriated budget. Transaction lists attached.

DISBURSEMENTS A

06-01-2021 thru 07-31-2021

1. Cecil W. Powell & Company	\$	46,951.00
2. J.P. Morgan	\$	372,516.81
3. R.V. Kuhns & Associates, Inc.	\$	54,596.77
4. The Northern Trust Company	\$	24,251.71
5. Loomis Sayles & Company, L.P.	\$	258,144.40
6. Acadian Asset Management	\$	276,228.00
7. Eagle Capital Management	\$	630,186.58
8. Thompson, Siegel & Walmsley, LLC	\$	39,677.67
9. Tortoise Capital Advisors, LLC	\$	60,370.25
Total	\$	1,762,923.19

DISBURSEMENTS B

06-01-2021 thru 07-31-2021

1. Accounts Payable Distributions	\$	97,656.80
2. Accounts Receivables	\$	83,138.01

2021-08-03CA Pension Distributions

All calculation and dollar amounts have been reviewed and calculated in accordance with accepted procedures.

June 11, 2021

1. Regular Gross	\$	6,650,888.44
2. Regular Lumpsum	\$	18,982.51
3. Regular Rollover	\$	0.00
4. Regular DROP Gross	\$	1,355,464.99
5. DROP Lumpsum	\$	0.00
6. DROP Rollover	\$	0.00
Total	\$	8,025,335.94

June 25, 2021

1. Regular Gross	\$	6,648,333.02
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City of Jacksonville Police and Fire Pension Fund
 Summary to the Regular Board of Trustees Meeting of
 Friday, August 20, 2021
 9:00 A.M. – 11:16 A.M.

2. Regular Lumpsum	\$	17,446.83
3. Regular Rollover	\$	0.00
4. Regular DROP Gross	\$	1,355,306.26
5. DROP Lumpsum	\$	243,016.24
6. DROP Rollover	\$	0.00
Total	\$	8,264,102.35

July 9, 2021

1. Regular Gross	\$	6,674,906.21
2. Regular Lumpsum	\$	00,000.00
3. Regular Rollover	\$	0.00
4. Regular DROP Gross	\$	1,367,113.48
5. DROP Lumpsum	\$	125,000.00
6. DROP Rollover	\$	71,640.32
Total	\$	8,238,660.01

July 23, 2021

1. Regular Gross	\$	6,662,157.36
2. Regular Lumpsum	\$	0.00
3. Regular Rollover	\$	0.00
4. Regular DROP Gross	\$	1,367,177.79
5. DROP Lumpsum	\$	199,896.72
6. DROP Rollover	\$	0.00
Total	\$	8,229,237.87

The following Consent Agenda items 2021-08-(04-07CA) were verified with supporting documentation and approved at the Advisory Committee meeting held on August 18, 2021. Vote was unanimous. Meeting Agenda attached.

[2021-08-04CA](#)

Application for Vested Retirement

[2021-08-05CA](#)

Application for Survivor Benefits

[2021-08-06CA](#)

Application for Child's Benefit

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

[2021-08-07CA](#)

Application for Time Service Connections

The following Consent Agenda items 2021-08-(08-12CA) were verified with supporting documentation and received as information at the Advisory Committee meeting held on August 18, 2021. Meeting Agenda attached.

[2021-08-08CA](#)

Refund of Pension Contributions

[2021-08-09CA](#)

Share Plan Distributions

[2021-08-10CA](#)

DROP Participant Termination of Employment

[2021-08-11CA](#)

DROP Distributions

[2021-08-12CA](#)

DROP Distributions for Survivors

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

VI. Executive Director's Report

Timothy Johnson discussed the outline of his Executive Director's Report, noting that he would like a motion to approve the JPOFFHIT lease of the PFPF Office's spare room following the expiration of the JSO Bike Unit's lease. He said Chris Brown has signed the contract with JPOFFHIT, but would like Board approval for transparency. He said Kevin Grant would give detail.

a. Analysis of Cash Flow Consolidation Recommendation – Kevin Grant

Kevin Grant discussed the Analysis of Cash Flow Consolidation Recommendation, which he has worked on with Fund Actuary Pete Strong of GRS. Pete Strong's analysis presents two recommendations which were presented to the City. He first discussed the fiscal year Annual Contribution Rebalancing process and definitions with the Board of Trustees, as shown on pages 1-2.

Richard Patsy suggest having the decision and recommendation on investing the City's contribution before the contribution is received, so that the contribution wouldn't be sitting in cash.

Kevin Grant said that could easily be done.

Pete Strong discussed his memo, Analysis of Cash Flow Consolidation Recommendation. He said we wanted to come up with a way to consolidate the September liquidation and December inflow – to offset the repayment with the amount due from the fund to the City. This would result in a smaller net amount of \$30-50 million instead of a \$170 million outflow and a \$140 million inflow. This would treat the contribution as a prepaid that becomes effective on October 1. We had a conversation with the City, and they did not like this idea and claimed they don't have as much cash on hand in October compared to December, due to the ad valorem tax revenue inflows.

Pete Strong discussed the secondary recommendation, which is to treat the PFPF's benefit payments, which the City pays, as City contributions throughout the year until the contribution is paid in full. The benefit payments are around \$200-220 million, and the contribution is \$250 million this year. Instead of the PFPF paying the City back, the benefit payments would be treated as record of payment of the contribution. Because the payments would be spread over approximately 9 months, interest would also be included. The City understands this and said this is their preferred approach. Then, there would be a \$50 million payment due in September to cover the benefit payments in the remaining months of the year. He said he discussed this with the City with Kevin Grant and Steve Lundy.

Pete Strong said we would add interest for 4-5 months, and count this in the October 1 valuation for Fiscal Year 2023.

Timothy Johnson said we have been discussing this for 3 years, and Pete Strong's memo was dated in March 2021. He said the Board could approve the recommendation now, or wait until next year. The intent is to begin the process in October 2022 to reduce the offset of rebalancing in September and December.

Richard Patsy asked if there would be any letter of agreement with the City.

Timothy Johnson said that was discussed, but it is a year away, and has asked Kevin Grant to talk with Randall Barnes in putting ga letter together.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Kevin Grant said the original process was never formalized, but we should put this new process in writing.

Michael Lynch said he thinks the Board should wait to vote on this, and needs more time to look at any unintended consequences that may arise from the new process.

Pete Strong said the contribution calculation would be affected by delaying the vote.

Michael Lynch asked what timeframe is needed to avoid affecting the calculation.

Pete Strong said the new process should be decided by December 1.

Chris Brown said this would give the Board some time to reflect on the matter. This will be tabled for now.

Terry Wood asked what the GEPP's contribution process is.

Randall Barnes said the City isn't planning to make changes to GEPP's process. The PFPF Board is deciding to change its process. The City does not have a preference. Historically, the theory behind the current process is that the PFPF is allowed to invest in riskier assets, and over the long-term results in a higher return. This is just how you want to manage the operations.

Chris Brown asked to put this on the October agenda.

b. JPOFFHIT Lease

Terry Wood made a motion to approve the JPOFFHIT lease of the spare PFPF Office room, seconded by Michael Lynch. The vote passed unanimously.

c. Chapter Funds Update – Kevin Grant

Kevin Grant covered the Chapter Funds Update, noting that Chapter 175 dollars total \$6,418,649.23 and Chapter 185 dollars total \$8,040,413.30 this year. These numbers are concrete, and the Department of Management Services will get the authority to disburse. The PFPF was approved early in May-June, so we should be reimbursed in the next two weeks.

Timothy Johnson said that every year, he writes a formal letter to the unions, and now that we have the final numbers, we will act.

Michael Lynch suggested a motion to move the money to the way the Unions see fit.

Timothy Johnson said that past practice was to write the letter to the unions first, then the unions come back with a recommendation which is reviewed, and then ratified by the Board. He said he would send the letters to the unions immediately, and we should expect to see their recommendation soon.

Michael Lynch asked if the funds would sit in an interest-bearing cash account until disbursement to the unions, as previously discussed.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Timothy Johnson said yes.

VII. Investment Consultant Reports

a. Monthly Investment Performance Analysis – July 31, 2021

Kevin Schmidt covered page 3 of the Monthly Investment Performance Analysis, noting that since the full termination of the fund's MLPs, the old targets have been removed, and the new targets and allocations are shown. Currently, the US Equity allocation is over the maximum allowable policy range, and a plan is in place to solve this with the new payroll reimbursement.

Chris Brown asked if this is due to the US Equity performance.

Kevin Schmidt said yes, it is due to the strong US Equity performance, and in part due to the exit from the MLP space.

Kevin Schmidt covered the total fund performance on page 5. The total fund was up 24.41% on a fiscal year-to-date basis. He noted that as shown on page 6, Baillie Gifford and Acadian are enduring tough performance issues related to China's political crackdown on what it views as monopolies, which started in the private education business. Fixed income is above target due to the proceeds from the MLP transition.

b. MWBE & SDVOB Broker / Dealer Utilization Report

Jordan Cipriani covered the Minority/Women-owned Business Enterprises ("MWBE") and Service-Disabled Veteran-owned Businesses ("SDVOB") broker / dealer utilization report and made the following points:

- \$79,865 of trading commissions were paid to MWBE & SDVOB broker / dealers for the time period October 1, 2020 – March 31, 2021 by PFPF's Equity managers.
 - This is an increase from the \$72,730 of reported MWBE & SDVOB Equity commissions reported for FY 2020.
- Northern Trust continues to have the highest usage of MWBE & SDVOB broker / dealers, accounting for 90% of all commissions paid to those firms by PFPF's Equity managers.
- Equity commissions paid to MWBE & SDVOB broker / dealers were split fairly evenly between the US Equity composite (47%) and International Equity composite (53%).
- Currently, only two firms (Northern Trust and Pinnacle), have a stated target for a % of total commissions to be paid to MWBE & SDVOB firms.
 - Northern Trust and Pinnacle have stated targets of 15% and 30%, respectively, for MWBE & SDVOB broker / dealer utilization as a % of total commissions; this is an increase from 10% and 25%, respectively.
- 64% of all MWBE & SDVOB commissions are paid to three firms: Mischler Financial Group, Penserra Securities, and Loop Capital Markets.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

c. Proposed Rebalance – Annual Payroll Reimbursement

Kevin Schmidt covered the Proposed Rebalance – Annual Payroll Reimbursement memo. He thanked Kevin Grant for starting this process early this year. The process will look similar to that of last year. There is a substantial overweight to US Equity – a bulk of the assets will come out of Eagle, due to strong performance.

Richard Patsy moved to approve the Proposed Rebalance – Annual Payroll Reimbursement as recommended by RVK and the FIAC, seconded by Nawal McDaniel. Discussion:

Michael Lynch said that page 3 of the memo says ‘upon approval by the FIAC and Board’. He said he wanted to be clear that this is the FIAC’s recommendation, and the approval comes from the Board of Trustees. The Board of Trustees is not obligated to accept the FIAC’s recommendation, and may do something different.

The vote passed unanimously.

d. Transition Management Update

Jonathan Kowolik presented the Transition Management Update as attached to the Board Book, which reviewed the transition management following the termination of the Fund’s MLP assets:

- Actual costs on the MLP Liquidation were higher than estimated but they were within 2 standard deviations of the estimated cost level. This was primarily due to the significant underperformance of the energy sector throughout the trading window.
- In our opinion, while this was a challenging trade, it appears that Northern Trust effectively managed controllable costs of execution including the provision of competitive commission rates.
- Although the outcome of the trade reflected negative relative performance when compared with a immediate theoretical liquidation benchmark, the market movements experienced during the trading period were both largely uncontrollable and the most significant driver of realized cost/performance.
- In our opinion, the marketplace would have similarly challenged the legacy managers, had they been utilized to execute the liquidation under a similar timeframe. RVK believes that Northern Trust’s execution quality and well-communicated adjustment to their pace of trading was appropriate and reasonable and when taken together with the transition manager’s transparent reporting, represents a source of value to the Fund.
- RVK believes that Northern Trust performed capably in this transition event.

VIII. *Counsel Reports*

Lawsikia Hodges informed the Board of Trustees that Jason Gabriel is no longer working at the Office of General Counsel. The new General Counsel is Jason Teal, a 20-year OGC veteran.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Bob Sugarman congratulated the Board of Trustees and PFPF Staff on the large amount of important, complicated work accomplished, and how productive meetings have been. Out of 150 public pension fund clients, the PFPF is about as good as it gets. He said he has not seen professional staff able to tee up issues as well as this.

Chris Brown thanked Bob Sugarman for the kind words, and thanked Tim Johnson, Steve Lundy and Kevin Grant for their work.

Chris Brown recessed the meeting for a 5-minute break.

Chris Brown reconvened the meeting at 10:06AM.

IX. Council Liaison Update

X. Old Business

a. Sugarman & Susskind Letter of Engagement

Timothy Johnson said he reduced his comments to a written statement for clarity:

“At the May Board of Trustees Meeting, Trustee Mike Lynch moved to direct me to prepare a letter of engagement for outside counsel to the Board with Sugarman & Susskind, and that motion passed unanimously. That engagement letter has been prepared by Bob Sugarman, executed by Chairman Brown, and awaits Board ratification.

I perceive the terms and conditions of this new engagement to be the same as the current engagement with Sugarman & Susskind. The only difference is in the parties. It’s an engagement between the Board and Sugarman versus Sugarman and OGC on behalf of the Board.

Since the Board meeting in May, there have been many hours of discussion between Bob, Lawsikia and me regarding other ways to give the Board access to the counsel they need to perform their duties as fiduciaries with confidence. This was at the request of General Counsel Gabriel, and agreed to by Chairman Brown back in May as a possible alternative to the Sugarman & Susskind engagement.

Now those discussions have continued. I’d estimate we had 7-8 hours of discussion on this topic, and they have continued through this week. Lawsikia will give the Board OGC’s position on the engagement letter along with the alternative path to outside legal counsel.”

Lawsikia Hodges presented her PowerPoint, “Office of General Counsel and Outside Counsel”. She said she wanted to explore the option of the Board moving in a direction to have its own counsel pursuant to Charter changes. That is a viable option. She said the Board has not had this discussion in any depth – this was an option mentioned at the meeting with Jason Gabriel when he was still General Counsel.

Lawsikia Hodges discussed page 1 of her presentation. She said the PFPF has an article in the City Charter:

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Current PFPF Charter/Code Provisions Regarding Office of General Counsel:

- City of Jacksonville Charter, Article 22 (PFPF)
 - Section 22.04. General powers.
The board shall have the power to: [...] (e) Employ and fix the compensation of an administrator and any consultants, attorneys, actuaries, accountants, and other employees or contractors as the board may require.
- City of Jacksonville Ordinance Code, Chapter 121 (Police and Firefighter Pension Plan)
 - Sec. 121.118. Use of general counsel.
The City's Office of General Counsel (the "OGC") is the proper source for legal representation on routine matters (e.g., open records, public meetings, other ordinary legal issues, and non pension legal services) subject to the Charter and Ordinance Code. The Charter and Ordinance Code allow for separate counsel for other purposes.

Lawsikia Hodges said these are the two provisions that the Police and Fire Pension Fund Board of Trustees has in the code and Charter with respect to its relationship with the Office of General Counsel.

Lawsikia Hodges continued to page 2 of her presentation:

Office of General Counsel – City Charter Provisions

- City of Jacksonville Charter, Article 7 (Office of General Counsel)
 - Sec. 7.01. Office established; general responsibility.
There is established an office of the City of Jacksonville to be known as the office of general counsel, **which shall have the responsibility for furnishing legal services to the city and its independent agencies**, except that the council may create an office of legislative counsel within the legislative branch whose purpose shall be to advise and assist the council and its committees and members in the achievement of a clear, faithful and coherent expression of legislative policies and to perform such other related duties for the council as the council may by ordinance direct. **For purposes of utilization of central services by the city and its independent agencies, the services of the office of general counsel shall be deemed to be central services or services of the central service department, as the case may be.** The general counsel shall provide to any member of the Duval County legislative delegation who resides in Duval County upon request an opinion on any matter relative to the government of the City of Jacksonville or any of its independent agencies.

Lawsikia Hodges said that the PFPF is an independent agency. The second paragraph is important when discussing other models in the City. If the Board were to pursue the Charter track, one question City Councilmembers might have is, "what is everybody else doing?" She said the second highlighted portion is important when discussing the language of the School Board's Charter.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Lawsikia Hodges continued to page 3:

- Continued – OGC Charter Provisions
The General Counsel may employ, supervise and terminate assistant counsels to assist with the efficient provision of legal services for the City's independent agencies. **The General Counsel may authorize the independent agencies to engage outside counsel upon certification by the General Counsel of compliance with the Charter and with the agency's authority and a written finding of necessity by the General Counsel.** The General Counsel may authorize the City to engage outside private counsel upon written certification by the General Counsel of its necessity, and such engagement shall be in accordance with procedures set forth by the City Council.
- Sec. 7.02. General counsel.
The head of the office of general counsel shall be the general counsel who shall be the chief legal officer for the entire consolidated government, including its independent agencies. The general counsel shall devote his/her entire time and attention to the business of the office and shall not engage in the private practice of law. **Any legal opinion rendered by the general counsel shall constitute the final authority for the resolution or interpretation of any legal issue relative to the entire consolidated government** and shall be considered valid and binding in its application unless and until it is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida dealing with a matter of solely state law.

Lawsikia Hodges said OGC can employ attorneys to provide more efficient legal services to the City's independent agencies. She said the first paragraph is new and approved by a voter referendum. She said OGC reads this to be in harmony, and not in conflict with Article 22. The Board can employ, but pursuant to Article 7, the General Counsel has some oversight, and authority, and has to approve that finding of necessity.

Lawsikia Hodges continued to page 4:

Current Charter Provisions Regarding OGC for Other Independent Agencies:

- JEA Section 21.07. Fiscal and budgetary functions.
"JEA shall be required to use the legal services of the city on a cost accounted basis except in those cases when the chief legal officer of the city determines that the city legal staff cannot or should not provide legal services in the required legal area."
- Jacksonville Port Authority, JPA Charter of the City of Jacksonville, Part B Related Laws, Article 5 Chapter 2004 465 Laws of Florida
"However, the authority shall be required to use the legal services of the City of Jacksonville, except in those cases when the chief legal officer of the city determines that the city legal staff cannot provide legal services in the required legal area."

Lawsikia Hodges said she wanted to talk about the landscape of other independent authorities and their relative relationship to the Office of General Counsel. She continued to page 5:

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Continued – Current City Charter Provisions Regarding OGC for Other Independent Agencies:

- Jacksonville Aviation Authority, JAA Charter of the City of Jacksonville, Part B Related Laws, Article 4 Chapters 2004 464 and 2005 328, Laws of Florida
“However, the authority shall be required to use the legal services of the City of Jacksonville, except in those cases when the chief legal officer of the city determines that the city legal staff cannot provide legal services in the required legal area Such use of city services, including, but not limited to, legal services, shall be on contractual basis and the authority is authorized to pay the city reasonable and fair compensation for such services so furnished by the city and used by the authority.”
- Jacksonville Housing Authority, JHA, Sec. 51A.103 Ordinance Code
“For such legal services as it may require, the Authority shall call upon the General Counsel of the City of Jacksonville.”

Lawsikia Hodges continued to page 6:

Continued – Other Independent Agencies Charter Provisions Regarding OGC:

- Duval County School Board, DCSB, Article 13, City Charter
“Section 13 09 Use of internal services of the city.
Unless otherwise directed by the council, the Duval County School Board shall utilize the internal services of the city except that the Duval County School Board shall not be required to use the services of the city's Division of Procurement and Supply and the City's Division of Human Resources
- Jacksonville Transportation Authority, JTA (Florida Statutes)
Pursuant to Sections 349 04 1)(349 041 2 Florida Statutes, the JTA is authorized to retain special counsel **without** General Counsel approval and authorization.

Lawsikia Hodges said that the School Board, in their section in the City Charter, is required to use OGC, but is not required to use HR and procurement. She said that up until this point, she has given language contained in the individual charters for these independent agencies. JTA is a different animal, and is created by Florida Statutes. JTA is authorized to retain special counsel without OGC approval.

Lawsikia Hodges continued to page 7:

JTA State Statutory Provisions – Chapter 349, F.S.

- 349.04 Purposes and powers
[...] (p) To retain legal counsel and financial, engineering, real estate, accounting, design, planning, and other consultants from time to time as the authority may determine to assist in the carrying out of the powers and obligations granted in this chapter.
- 349.041 Provision of funds and services by city to authority

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

(1) The authority shall prepare and submit annually its requests for such funds as it may require from the city for the ensuing year to the council of the city on or before June 1 setting forth its estimation for related gross revenues and estimated requirements for operations, maintenance expenses, and debt service A copy of such requests shall be furnished to the Department of Transportation. The council and the mayor of the City of Jacksonville may appropriate such funds as they deem appropriate for the use of the authority, and the use of such funds shall be subject to audit by the Council Auditor of the City of Jacksonville

(2) Except as the council may provide, and except as otherwise required by any trust indenture outstanding on September 1 1971 the authority may use, on a cost accounted basis, the central services of the city and shall pay therefor.

Lawsikia Hodges said that whether or not JTA's engagements are approved OGC approval, they still submit to OGC's binding authority pursuant to Article 7. On a practical basis, they move freely in and out of their outside counsel engagements.

Lawsikia Hodges continued to page 8:

Requirements to Amend City Charter Relative to the Office of General Counsel:

- ARTICLE 3 POWERS OF CONSOLIDATED GOVERNMENT (CITY CHARTER)
Section 3.01 General powers.
The consolidated government: [...] (e) May repeal or amend any provision of this charter, and adopt other provisions of this charter, by ordinance, to the same extent as could be done by the Legislature of the State of Florida, except that
- [...] (2) Any change in this chapter made by ordinance which affects the creation or existence of a municipality, the terms of elected officers and the manner of their election, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, matters prescribed by the charter relating to the office of general counsel, matters prescribed by the charter relating to the council auditor's office, the form of government, or any rights of municipal employees cannot become effective without approval by referendum of the electors as provided in s.166.031, Florida Statutes. For the purposes of this paragraph, "municipality" includes the county and municipality of the City of Jacksonville but excludes the Cities of Jacksonville Beach, Atlantic Beach, and Neptune Beach and the Town of Baldwin.

Lawsikia Hodges said she wants to make sure the Board understands that with respect to certain topics within the City Charter, City Council can amend certain things, but some things they cannot amend without a voter referendum. One reason pension reform had to go to referendum was because of this. The General Counsel's office is one of these topics – if you tinker with it, you take away some of that power – it cannot become effective without a referendum of Duval County voters.

Lawsikia Hodges continued to page 9:

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Recommended Board Options Regarding Independent Counsel

- Amend the City Charter and Ordinance Code Regarding the PFPF's Use of Office of General Counsel
 - Board provide input to Office of General Counsel
 - Office of General Counsel outline necessary approval for charter/ordinance changes based on Board input (City Council, referendum, etc.)
 - Office of General Counsel prepare necessary documents

OR

- Adhere to the current Article 7 City Charter Requirements Regarding Use of Outside Counsel

Lawsikia Hodges said that OGC's standpoint is, if the Board wanted to untether itself from OGC, that would require an amendment to the City Charter and Ordinance Code. City Council would ask, from the vantage point of the consolidated government and charter, what is everybody else (the other independent agencies) doing? All the other agencies have OGC lawyers going into meetings, sitting at the table, doing the work. Even the School Board after the recent case. Except for JTA, which still submits to the binding authority, but moves freely in and out of engagements without OGC authorization.

Lawsikia Hodges said her and OGC's question would be, what is the Board trying to look like? Is the Board trying to completely untether itself from OGC, meaning it does not want to submit to the binding opinions? Or is it wanting to look more like JTA, to freely move in and out of engagements without OGC's written necessity finding? The Board would determine that, give it to OGC, then OGC would return with an outline to determine whether it would require just 10 votes in City Council, as a regular ordinance, or is it something that requires that and further approval by the voters through a referendum. OGC would provide the necessary legal documents by working with the Board.

Lawsikia Hodges said General Counsel Jason Teal is aware of this option, and fully supports it as a possible pathway for the Board to get where it wants to go. He has reiterated, this is not a matter of OGC supporting or not, it is a policy call for the Board and City Council to make, and maybe even the voters. The other option is to adhere to the current Article 7 language as the way OGC reads and interprets it, which would require the proposed engagement letter for outside counsel to be approved by the General Counsel.

Lawsikia Hodges said OGC does not believe the letter is the same thing in substance – the first letter was between OGC and Bob Sugarman's office. We believe the scope has changed; in the body of the letter, we refer to Bob Sugarman as independent outside counsel. We believe that in the current state of the Charter, the Board of Trustees cannot have an independent outside counsel. The letter also takes away OGC's right to terminate the engagement. The letter needs to be approved by the General Counsel.

Lawsikia Hodge said OGC does not deal with JTA's outside counsel, but every other independent agency engages outside counsel in the same manner as Bob Sugarman's current contract, executed between his office and OGC.

Chris Brown asked Bob Sugarman for his input.

Bob Sugarman thanked the Board of Trustees for their confidence, and their engagement of his firm over the past five years. He assured the Board that his counsel – his legal advice – has always been 'independent'. He said that although

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

OGC says they have the right to fire his firm, it does not mean he kowtows to what they say. He said that he likes the idea to follow JTA's model.

Terry Wood gave examples of OGC having issues with City Council Members, and the GEPP using independent counsel, from the time he served on those bodies. He said the PFPF Board of Trustees was created by State Statute which gave the Board its powers. Recently, a judge cited that for a reason for determination. The City Council voted unanimously against the establishment of this Board, but the local delegation took it to the legislature and it was approved. He said he believes the Board of Trustees has the right to sign the agreement with Bob Sugarman, and still have a relationship with OGC – they should not be adversarial.

Richard Patsy asked if Terry Wood recommends adopting the letter.

Terry Wood said yes.

Michael Lynch said he would like to make one correction on Timothy Johnson's reading, that the letter should be amendment. He said that he believes, with the Chair's signature, and Bob Sugarman's signature, the letter is already in effect. He said this is just a formality of accepting it as the Board of Trustees. The Board of Trustees can decide how to navigate the relationship as it moves, but this is something the Board of Trustees has agreed with – engaging Bob Sugarman directly was approved unanimously in May.

Michael Lynch said a couple of points in Lawsikia Hodges's presentation centered around OGC's power, and not the Board of Trustees' independence, and its ability to make governance decisions. Also, they hinted at their ability to fire the Board's independent counsel. He said he had a meeting with four OGC members on October 30, 2018, and asked a question regarding independent counsel. He said he asked if the Board's lawyer gives the Board a different opinion than OGC gives, who does the Board follow. He said OGC's answer was, "maybe we need to find you a new lawyer." He said that statement does not tell him OGC is advocating for the Board of Trustees. He said it tells him it is OGC's way, and the Board is just duplicating charges. He said Jason Gabriel had a finding – he already agreed to this letter. There is no mention of revocation in the Charter. Jason Gabriel said the Board needs independent counsel, and he entered into this agreement saying yes, the Board can do it – nothing has changed about that.

Michael Lynch said his sincerest hope is that we are going to agree that the engagement, on the Board's behalf with Bob Sugarman is the Board's stance and move on to the next order of business.

Chris Brown asked why action was requested on this.

Timothy Johnson said that his interpretation from Michael Lynch's motion in May's meeting was that he would bring the engagement letter back to the Board of Trustees. He said he has brought back the engagement letter that has all the terms from the existing engagement with Bob Sugarman. He said he understands – with respect to Lawsikia Hodges – that not everything OGC requires is in the letter.

Chris Brown said that OGC has already approved Sugarman & Susskind as counsel.

Lawsikia Hodges said that Jason Gabriel did not approve this letter that is before the Board of Trustees for consideration. In fact, Jason Gabriel believes that this letter does not comport with Article 7 of the Charter. Even the letter, as proposed, requires OGC to sign it, with a different scope. She said she wanted to make sure this is clear.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Nawal McDaniel asked if the Board wanted to proceed with amending the Charter, to become more like JTA, where it is clear the Board has the authority to hire its own counsel – but is still subject to OGC’s binding authority. She asked what would happen in that circumstance if the Board’s independent counsel had an differing opinion.

Lawsikia Hodges said that happened with the School Board, and is the only time that has ever happened in the history of consolidated government since 1968. She asked Jon Phillips to explain.

Jon Phillips said the School Board situation is unique – they took the position that the City Council was required to vote a certain way regarding putting a referendum on the ballot. OGC’s opinion was that the School Board did not have the right to force the City Council to vote a certain way. The School Board went to court, and the Court said that under these circumstances, the School Board had the right to hire counsel and bring the lawsuit. The Court did not address the substantive issue of what the School Board was demanding. OGC still disagrees with the Court’s ruling. The Court’s ruling does not apply to other independent agencies. The case was ultimately settled by compromise without a substantive ruling. The Charter is very clear under this instance – there is no other way to look at it, in OGC’s view – the Board’s ability to hire independent counsel is not provided for in the Charter. It would be fine to get the Charter changed. OGC is just interpreting the Charter as best as we can.

Michael Lynch said he encourages the Board to read the judge’s ruling, and appreciates Jon Phillips. He said the fight between the School Board and OGC – at the end of the day – had more to do with the School Board’s ability to hire a lawyer. He said the General Counsel at the time said the School Board members couldn’t do it, and could be personally liable for that action. OGC has made that same threat to this Board. An attorney represented the School Board pro bono and said there is no personal liability. They went to court, and the judge’s ruling said, paraphrasing, ‘there are times that OGC is adversarial. This is one of those times, and there is no other option but for the School Board to get their own attorney.’ The Court ruled in the School Board’s favor.

Michael Lynch said the Board is not arguing over all of those things. He said that in his own opinion, the Board has made its decision – the Board believes it should engage Bob Sugarman directly, and made that decision in May. He encouraged the Board to pass this motion and move on. If OGC disagrees, they can work with the Chair, or a committee of Executive Director if the Chair chooses, on how to navigate this relationship better. This goes back 50 years. The Board has its stake in the ground, and has made its decision.

Richard Patsy asked for clarification regarding the day-to-day relationship with OGC. He asked if OGC would continue to represent the Board on this. He asked, regarding Bob Sugarman, if the relationship hasn’t changed, just who has engaged Bob Sugarman – the Board versus OGC.

Michael Lynch said his opinion is that this lays the groundwork, and if the Board has a question that OGC is conflicted on – like John Keane – instead of asking OGC, the Board would ask its independent counsel, and he may give the Board another opinion. The ability to fire him is a prime example of that. He asked to imagine if the Board was given legal advice, and chose to follow Bob Sugarman’s advice over OGC’s, if OGC would have kept Bob Sugarman. He said he believes OGC would have fired him immediately.

Chris Brown said that when each Trustee was elected, or chosen, we were given the responsibility to be fiduciaries – the Trustees’ commitment is to the Members of the Fund. When the Board of Trustees was placed in the situation where the Trustees had to be involved in a lawsuit that none of the Trustees believed they should be involved in, and had to take a stance that none of the Trustees felt they should be taking, and the Office of General Counsel felt there was no conflict there – that undermined any of OGC’s credibility. He said he respects OGC, and respects many who work there

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

who do great work on administrative hearings and contracts. Clearly, that was broken. It is the job of the Board of Trustees, as an independent authority to make a decision where the Members are protected. The fact that the Board of Trustees had to spend \$400,000 on an absolutely ridiculous, politically motivated lawsuit is why we are here today. He said he is not changing his mind, and asked for a motion to accept the contract that was approved in May, which he has signed.

Michael Lynch said he would be more than happy to make that motion. Seconded by Richard Patsy. The vote passed unanimously.

b. Reemployment Hearing Recommendation

Timothy Johnson read a statement on the Reemployment Policy, noting he recommends adding an item to the agenda in September to use for this conversation. He said he is not recommending action on this subject today.

“Past practice suggests any reemployment outside of 121.105(d) is a violation. 121.105(d) are those nine positions that have been designated where you can work while you collect your pension.

I’ve spoken to the Benefits Manager Chuck Hayes, and my predecessor, John Keane, and when asked, both have told our Members, as have I, that reemployment outside of one of these nine positions is not permitted under the ordinance code. In other words, it is a violation of the law, and your pension will be stopped.

About 20 months ago, our OGC lawyers filed a position with the Court in the Keane case. They claimed that when John Keane was hired by this Board, his firefighter pension should have stopped, and all that money he received should have been repaid. In other words, John was hired in a position that was not described in the ordinance, therefore it was illegal for him to get a pension and a salary at the same time.

Then approximately 90 days ago, this Board received a copy of an opinion contradicting that earlier pleading. That is the Linn opinion. About a month later, two of our pensioners were reemployed by JEA in positions not listed in the ordinance code. So, I have a potential overpayment of benefit violation due to 121.105. I say potentially because past practice has interpreted, if you’re not in one of those positions, it’s a violation. But, we have a legal opinion that says that doesn’t matter. In other words, you don’t have to be in one of those nine positions – if you’re with JEA, you can be reemployed.

So, I have a situation now where I don’t know what to do. I don’t know whether to treat this as a violation based on past practice, or to consider it legal based on this recent opinion. Therefore, I am recommending that we inform the affected parties – those are the two pensioners who have been reemployed – we place this topic on the September agenda, for the Board to hear from its lawyers, and basically make a policy decision. You direct me – you make a decision, “Tim, is this a violation?” if so, we will go through those hoops, go down that path, if it’s not a violation, then these Members can continue to work and receive their pension, and there is no further action.”

Chris Brown said the heart of the issue is whether or not the Members are working for “the City”. The Linn opinion says JEA is independent; however, there is the contradiction with the John Keane pleading.

Timothy Johnson said he has no knowledge of any other pensioners reemployed elsewhere. He said the Fund has probably 5 opinions from 7 different lawyers on reemployment.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Chris Brown asked how the PFPF has treated pensioners rehired by JEA.

Timothy Johnson said he has no knowledge of anyone being rehired by JEA.

Richard Patsy asked how the City retirement system would treat a JEA retiree getting rehired by the School Board.

Timothy Johnson said that in June, the Board directed him to write a letter to the unions asking to clarify the chapter 121's reemployment language as part of the collective bargaining agreement. The language regarding reemployment in the City's retirement system ordinance, Chapter 120, is much clearer.

Chris Brown asked if JEA employees were in the GEPP prior to the plans closing in 2017.

Lawsikia Hodges said that prior to 2017, JEA's Charter said any employee must join the GEPP.

Chris Brown asked what would happen if a City of Jacksonville employee retired in 2015, and started collecting their pension from the GEPP, and then was hired by JEA in 2016 – would they continue to receive their pension payment?

Lawsikia Hodges said that Timothy Johnson said this has never happened, but pursuant to how the code language reads, the employee would absolutely be able to continue to receive their pension check, and get their paycheck (*Note: Lawsikia Hodges later corrects this statement*).

Chris Brown said their name would be listed twice with the GEPP.

Timothy Johnson said he wanted to be clear – Chris Brown's hypothetical related to a City of Jacksonville employee being rehired by JEA. He said his comments only relate to PFPF pensioners becoming rehired by JEA.

Richard Patsy said the converse is exceptional – you would not likely see a JEA retiree get hired by JFRD. They would most likely get hired by the School Board or JTA.

Terry Wood said that he is a City of Jacksonville retiree receiving a pension from the GEPP. He is working part-time at the Supervisor of Elections. He said that if he works more than 50 hours a week, his pension would stop.

Michael Lynch said he does not believe Timothy Johnson's intent is to litigate this issue now. We have been told today that two pensioners have been reemployed by the City. We do not have any option but to take fiduciary action – to notify the members, and hold a hearing. If the Board were told a member had committed a forfeitable offense, the Board would have no option but to move forward. This is the same – the Board has been made aware of something. Timothy Johnson's recommendation was to notify the members that they are in potential violation of 121.105. He read 121.105(a):

“Except as otherwise provided in this Section, any pensioner of the pension funds created by this Chapter who is retired or elects to retire under the provisions of his respective fund for time-service retirement or vested retirement and who has been or is thereafter reemployed by the City shall cease to receive his or her pension or pension entitlement during such period of reemployment [...]”

Chris Brown asked if the PFPF has been administering the same standard, that if a pensioner was hired by JEA, that would be considered hired by 'The City'.

Timothy Johnson said that is correct – aside from the nine positions listed in 121.105(d), any other reemployment by 'The City' is illegal.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

Chris Brown said the point of contention is the PFPF's definition of 'The City', which could change.

Michael Lynch said he would like to make a motion on Timothy Johnson's recommendation.

Lawsikia Hodges said she wanted to make a correction – when she answered a question, she was answering from a Chapter 121 perspective and not a Chapter 120 perspective. Chapter 120 defines 'City' as 'City of Jacksonville', 'JEA', 'the JHA', and 'the PFPF'. Their prohibition reads, in Chapter 120, "if a retiree or separated vested member reenters City service in a position covered by this plan, benefit payments shall cease". So, the answer to Chris Brown's hypothetical is the pension would get cut off. She said she is correcting this for the record.

Chris Brown said there is confusion, and the idea of a hearing is in order.

Bob Sugarman said that a hearing relates to a formal determination of an individual's legal rights which results in a final Board order, which could be appealed to the Court. He said he understands Timothy Johnson's recommendation to be a request for the Board's interpretation of the pension plan. Once the Board interprets the plan, then a hearing may be necessary based on the interpretation. Once the Board decides, Timothy Johnson will administer the decision. The Board needs more information to make this determination – Timothy Johnson will provide documents, OGC will provide information. He said he would support adding an agenda item on 121.105, and presenting all the information from both sides.

Michael Lynch asked if the Board of Trustees is in danger of breaching fiduciary duty to continue delaying action on this issue – the Board was made aware of this in May.

Bob Sugarman said that he does not view this as a risk, because if there is an overpayment to be recovered, there is an overpayment procedure and policy, and enough DROP benefits to recover overpayments.

Chris Brown said the sooner is better.

Donald Tuten asked the Board of Trustees to look at all the names of the PFPF's retirees within the City email system. He said he knows retired fire chiefs are working at JFRD Headquarters, and the dock master, and employees at the port. He said that instead of focusing on just two pensioners, the scope should be broadened.

Chris Brown said the PFPF has already taken steps to do this.

Michael Lynch said that those fire chiefs are working as contractors. He said that OGC provided the Board with substantial information advocating for those members to be contractors. He said School Board and JTA reemployment was discussed, and this conversation has been happening for five years.

Lawsikia Hodges said that OGC does not advocate – OGC just looks at the law and gives opinions. It is unethical to personally advocate. JEA asked OGC a legal question, and an answer was given.

The Board of Trustees discussed scheduling a special meeting to discuss this further.

Michael Lynch said he made a motion to take action to set a meeting to discuss reemployment, seconded by Terry Wood. The vote passed unanimously.

City of Jacksonville Police and Fire Pension Fund
Summary to the Regular Board of Trustees Meeting of
Friday, August 20, 2021
9:00 A.M. – 11:16 A.M.

XI. New Business

XII. Upcoming Meetings

- a. Board of Trustees & FIAC Manager Update – WEDGE Capital – September 2, 2021 at 12:00 P.M.*
- b. Personnel Committee Meeting – September 17, 2021 at 8:00 A.M.*
- c. Board of Trustees Meeting – September 17, 2021 at 9:00 A.M.*

XIII. Adjournment

11:16AM

Nawal McDaniel, Board Secretary

Summary Prepared By:

Steve Lundy, Deputy Director

City of Jacksonville Police and Fire Pension Fund

Posted: 09/01/2021

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