

**June 17, 2016**

*by: Steve Durden*

**MEMORANDUM**

**To: Police and Fire Pension Fund Board of Trustees**

**CC: Jason Gabriel, General Counsel  
Beth McCague, Interim Executive Director, PFPF  
Legal Opinion file**

**From: Stephen M. Durden, Chief Assistant General Counsel**

**Re: Time-service as of Effective Date**

**Date: June 17, 2016**

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**Introduction.**

The question has arisen as to the application of parts of Ordinance 2015-304 related to years of service as of effective date. In particular, the question has arisen as to the proper application of the term "20 years as of the effective date" for those member who, prior to the effective date, applied for time service credits prior to the effective date.

**Question presented.**

Whether a member who, prior to the effective date of Ordinance 2015-304, enters into a contract to purchase time-service credits, is entitled to count those time-service credits in determining years of service as of the effective date.

**Short answer.**

A member who, prior to the effective date of Ordinance 2015-304, enters into a contract to purchase time-service credits, is entitled to count those time-service credits in determining years of service as of the effective date, provided that the member completes the purchase as called for in the time-service purchase agreement.

**Discussion.**

This question concerns the following factual circumstance: (1) A member had 15 or more years as of the effective date. (2) The member had applied for time-service credit prior to the effective date. (3) The member began payment for, and had contracted to make payment for, the applied-for time-service credit. (4) Had the payment been completed prior to the effective date, the member would have 20

years of creditable service prior to the effective date. (5) The member did not, however, complete the payments before the effective date.

The question is whether the member described hereinabove has "20 years of service as of the effective date." The superficially easy answer is "no." The better answer is, however, "yes." With regard to pensions, the Florida Supreme Court has engaged in an analysis akin to an equitable or contractual analysis, without actually referencing equity or contract. In an early pension case the Court held that a person, Holton, was entitled to a pension once he had done all that would be required to obtain a pension. As stated by the Court, "We think that in this case the right of Holton to a pension became a vested one by reason of his having fully performed all that he was required to do under the terms of his employment as a condition precedent to his having a pension allowed to him on his 'application' for retirement as a 'member' of the Tampa Fire Department." *State ex rel. Holton v. City of Tampa*, 119 Fla. 556, 559, 159 So. 292, 293 (1934).

Admittedly, this factual circumstance can be factually distinguished from the one under consideration. In this case, however, the factual distinctions are not as important as the Court's analysis. Indeed, a small modification of the Supreme Court's holding demonstrates its applicability: "We think that in this case the right of [the applicant] to [years of time-service credit] became a vested one by reason of his having fully performed all that he was required to do under the terms of his [pension plan] as a condition precedent to his having [time-service credit] allowed to him on his 'application' for [time-service credit]." Undeniably, in the cases under consideration here, the applicants have done all that was required in order to obtain time-service credit and had done so prior to the effective date. But for the payment of money, a payment to which the applicants are contractually bound, the applicants would have the time service credits prior to the effective date of Ordinance 2015-304-E. The better understanding of the term credited service as of the effective date should include time-service credits, if the applicant was under contract to purchase those credits at the time of the effective date of the ordinance.

While it is unnecessary to consider contractual rights, the conclusion above at least seems consistent with contractual rights. In other words, it might be argued that the purchaser of time-service credits purchased time-service with whatever rights went with that purchase at the time of purchase.

The above conclusion is also consistent with a variety of cases that discuss the purchase of time-service credits before and after the effective date of pension plan changes. *See, e.g. In the Matter of Carrol*, 2009 WL 1491388 (Superior Court of New Jersey, May 29, 2009); *Buddell v. Board of Trustees, State University Retirement System of Illinois*, 514 N.E.2d 184 (Ill. 1987); and *Mackenzie v. Board of Trustees*, 913 A.2d 810 (N.J. Superior Court, 2006). These cases and others lead to the conclusion, that purchases of time service credit are based on the law in effect at the time of the purchase.

**Conclusion.**

I trust this answers the question presented. If I can be of further assistance or you have further questions, please do not hesitate to contact me.

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