

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 Credits, Community Service Officers

Date: July 8, 2016

Discussion

Section 121.107, Ordinance Code. Subsequent to the enactment of Ordinance 2105-304-E a number of questions have arisen as to the obtaining time-service credits by members who once served as community service officers ("CSO"), but were not in any pension plan while serving as CSOs. Ordinance 2015-304-E did not significantly modify Section 121.107, leaving in place most of the options that section makes available for the obtaining of time-service credits. Below is the relevant portion of the current Section 121.107:

Sec. 121.107. - Credit for broken service, continuous service, partial years transferability, and service as a Florida State Certified Police Officer or Firefighter.

(a) A person who becomes a member of the Police and Fire Pension Fund who is not a retiree of any current or former pension plan of the City of Jacksonville . . . , shall be entitled to receive time-service credit for any previous period of full-time employment either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, provided such service has not been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system. For purposes of applying these provisions, a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise. However, such general prohibitions shall not preclude a former member of the Fund from purchasing previous vested service with the Fund for which a refund of contributions was previously received and for which the former member has not otherwise used for entitlement to benefits under any other

pension system. To be entitled to credit, a member shall make application for credit to the Board at any time prior to retirement. Furthermore, the employee shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.

(c) For purposes of applying this Section, "full-time employment" shall mean regular employment as permanent, probationary, provisional, grant or appointed employees involving a regular work week of at least 40 hours. Employment in such eligible positions are generally represented by positions that are included in the maximum authorized number of employees set forth in the annual City budget ordinance. As such, "full-time employment" specifically does not include forms of employment represented by temporary employees (described in 106.404), part-time employees, or seasonal employees. The following types of employment are considered to be in the category of temporary, part-time, or seasonal employees and accordingly, such specifically named categories of employment do not qualify as "full-time employment" for purposes of this Section:

- (1) Court Bailiffs,
- (2) Volunteer Firefighters,
- (3) Auxiliary law enforcement officers,
- (4) Elections workers,
- (5) Student positions and summer help,
- (6) Contract employees, and
- (7) Positions filled through employment agencies.

The above listing is not intended to represent an exhaustive compilation of all of the forms of temporary, part-time, and seasonal employment which are excluded from the definition of "full-time employment."

Persons Entitled to Obtain Credits. Subsection(a). This subsection(a) provides that: "A person who becomes a member of the Police and Fire Pension Fund . . . **shall be entitled** to receive time-service credit for **any** previous period of **full-time employment** either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, . . ." This subsection first creates this category of persons with previous employment with particular governmental agencies, i.e., service with any part of the entire consolidated government, including independent agencies, as well as the City of Atlantic Beach Fire Department. Subsection(a) then removes the entitlement from:

1. "[any] retiree of any current or former pension plan of the City of Jacksonville or Duval County." (emphasis added); and
2. "[any] retiree . . . under the Florida Retirement System or the City of Atlantic Beach;"
3. "[any person who] has attained vested status under the Florida Retirement System or the City of Atlantic Beach."

This subsection(a) also prohibits the entitlement if “such service [within entire consolidated government or the Atlantic Beach Fire Department] has [] been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system.” This sentence seems to prevent a person who has attained vested status in a pension plan based on service within some part of the entire consolidated government from purchasing this time service after becoming a member of the PFPF. Subsection(b) (discussed below) creates an exception to this prohibition for those who directly transfer from service which earns a retirement within the GEPF.

The rest of subsection(a) discusses definition of terms and implementation of the provisions. One prerequisite to entitlement to receipt of time-service credit is that the “member shall make application for credit to the Board at any time prior to retirement.” In other words, the transfer is not automatic. Second, the member “shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.”

In sum, subsection(a) permits members who once worked for some portion of the entire consolidated government (plus those who worked for the Atlantic Beach Fire Department) to receive time-service credit for **any and all** service as employee of the entire consolidated government with a few provisos. (1) The member applies. (2) The member pays the amount required by the ordinance or such amount determined by the Board. (3) The member is not a retiree of a consolidated City pension plan. (4) The member is not retiree under FRS or the Atlantic Beach pension plan. (5) The member is not vested under FRS or the Atlantic Beach pension plan. (6) Finally, “a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise.”

Applying these provisions: (1) Those PFPF members who become members **directly from** service with an agency of the entire consolidated government within the GEPF, i.e., those who “transfer” into a PFPF membership employment position, may transfer all of that time into the PFPF. (2) Those members who become members of the PFPF **with a break in service from** service with an agency of the entire consolidated government within the GEPF, or with an agency of the entire consolidated government, but not within GEPF, may transfer all of that time into the PFPF, so long as the member “has [not] previously secured a legal claim to an entitlement to benefits under another pension plan.”

The last two sentences of subsection(a) provide the prerequisites for those members seeking previous time service credits while working for the City, but who were not part of a City pension plan:

To be entitled to credit, a member shall make application for credit to the Board at any time prior to retirement. Furthermore, the employee shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.

As explained in the attached memorandum of August 4, 2015, Community Service Officers were and are full-time employees of the City of Jacksonville (and they are now entitled to be in the General Employees' Pension Plan). To be clear, Section 121.107 does not precondition authority to purchase or obtain time-service credits on previous membership in a City Pension Plan (or any other pension plan). The only relevant pre-condition is the type of previous employment, e.g., (1) previous (2) full-time (3) City employment. Previous enrollment in a pension affects the cost of time-service credits, not their availability.

Community Service Officers who were not in GEPP are entitled to purchase time-service credits for previous full-time employment. Community Service Officers who were in GEPP are entitled to transfer time-service credits for previous full-time employment and time in GEPP. Section 37.201, *Ordinance Code*, does not require a different answer. In pertinent part, this section reads:

The Sheriff is authorized to appoint such special police officers as he may deem necessary to enforce law and preserve order in the City. Special police officers appointed under the authority of this Section shall not participate in the police pension and relief fund and shall be subject to discharge by the Sheriff at any time, at the pleasure of the Sheriff.

Assuming Community Service Officers are appointed pursuant to this section, this section prohibits Community Service Officers from *being* in the PFPF but is irrelevant to their *status* as full-time employees of the City and hence irrelevant to their eligibility for time-service credits. So, while Community Service Officers may not be in the PFPF, they are allowed in GEPP and allowed to transfer or purchase of their time as Community Service Officers.

Conclusion.

If I can be of further assistance or you have further questions, please do not hesitate to contact me.

EXHIBIT 1

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