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July 13, 2015

Stuart Kaufman
Klausner, Kaufman, Jensen & Levinson, P.A.
7080 NW 4th Street
Plantation, Florida 33317

*Re: City of Jacksonville Police and Fire Pension Fund
Forfeiture of Pension Benefits for Nelson Cuba and Robert Freitas*

Dear Mr. Kaufman:

You have asked us to review the circumstances concerning the conviction of Jacksonville Police Officers Nelson Cuba and Robert Freitas in relation to the forfeiture provision set forth in Fla. Stat. §112.3173. We have reviewed the materials forwarded to us and conducted additional research into the status of and relationship between the Jacksonville FOP Foundation and FOP Jacksonville Lodge 5-30. Based on our review as outlined below it is our opinion that the facts presented do not meet the criteria of §112.3173; forfeiture is not merited.

In order for an employee to forfeit his pension he must either be convicted of one of the offenses specified in the statute or be terminated “by reason of his or her admitted commission, aid, or abetment of a specified offense, ...” §112.3173. A “conviction” for the purposes of forfeiture includes a guilty plea. Each of the specified offenses requires some nexus between the illegal act and the individual’s employment by a public entity, such as embezzling public funds or taking bribes.

During their tenure as police officers employed by the City of Jacksonville Police Officers Cuba and Freitas owned and operated an “internet café” in conjunction with an organization known as Allied Veterans of the World. This operation sold internet time to patrons who then would use that time to play a sweepstakes game that revealed winning numbers via a simulated digital slot machine. A state-wide investigation led to charges that such operations were in fact illegal lotteries and unlawful slot machines.

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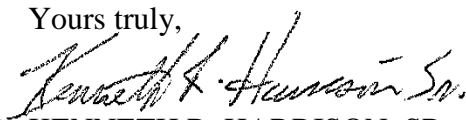
Cuba and Freitas were arrested on March 13, 2013 on multiple charges. Before trial both men entered guilty pleas to multiple felonies. Freitas entered guilty pleas to charges of Fla. Stat. §849.15, "Manufacture, sale, possession, etc., of slot machines," and §896.104(4)(a), "Structuring transactions to evade reporting or registration requirements." Cuba also pled guilty to violations of §849.15, and §896.104(4)(a), as well as §849.09, which prohibits most lotteries. The court withheld adjudication of guilt on all charges.

In order for the forfeiture provision to apply there must be some nexus between the felony and the individual's employment. There were no allegations that either man committed misdeeds while in uniform or on City time. Beyond their employment as City police officers both were elected officers of FOP Lodge 5-30. Both served as officers of the FOP Foundation as well. Despite their similar names, the two are separate and legally-distinct entities, one a charitable organization, the other a labor organization, neither a division of the City itself. Notably the Foundation's bylaws do not require Foundation officers themselves to be Jacksonville police officers or, for that matter, officers of Lodge 5-30.

While Cuba did deposit funds from their gambling operation into the Foundation's bank account, there is no nexus between that action and public employment. Any individual without any connection to or employment with the City of Jacksonville could serve as a Foundation official and donate to the Foundation. The terms "Jacksonville" and "police" by the two organizations do not rise to the level of a connection between the officers and their misdeeds such that one could claim they committed their felonies in connection with or through their service as public employees. Simply put, the facts do not meet the criteria required to forfeit their pension benefits.

We thank you for the opportunity to assist in this matter.

Yours truly,



KENNETH R. HARRISON, SR.

KRH/jd