KLAUSNER KAUFMAN JENSEN & LEVINSON

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
ATTORNEYS AT LAW

Writer's e-mail: bob@robertdklausner.com

October 9, 2015

Board of Trustees
Jacksonville Police and Fire Pension Fund
1 West Adams Street
Jacksonville, Florida 32202

Re: IRC Section 415(m) excess benefit arrangement
Our File: 900342

Dear Trustees:

This is in response to a question earlier posed by former trustee Walt Bussells concerning the nature of a Section 415(m) excess benefit arrangement.

Under the provisions of Section 415(b) of the Internal Revenue Code, a defined pension benefit cannot exceed a certain dollar amount (approximately $211,000 per year at age 62). That maximum amount is reduced with retirements younger than age 62 and increased with older retirements. In addition, under Code Section 401(a)(17) no more than a certain dollar amount of income can be counted toward a defined benefit retirement.

Congress recognized that state and local pension benefits which acquire constitutional protection may exceed one or both of those limits. In such cases, the employer may make the additional payments through an excess benefit arrangement under IRC Section 415(m). Failure to establish an excess benefit arrangement has been held in at least one state to violate state constitutional retirement guarantees. See, *Matsuda v. Cook County*, 687 NE2d 866 (Ill. 1997).

7080 NORTHWEST 4TH STREET, PLANTATION, FLORIDA 33317

PHONE: (954) 916-1202 • FAX: (954) 916-1232
www.robertdklausner.com

In Florida, once an employee becomes eligible to retire, benefits cannot be diminished or impaired. *O'Connell v. State,* 557 So.2d 609 (Fla. 3d DCA 1990) and *Bean v. State*, 732 So.2d 391 (Fla. 2d DCA 1999). This is also true with retired persons. See *Scott v. Williams*, 107 So.3d 379 (Fla. 2013); *State ex rel O'Donald v. Jacksonville Beach*, 142 So.2d 349 (Fla. 1st DCA 1962); *aff'd* 151 So.2d 430 (Fla. 1963).

It is precisely for these reasons the City established an excess benefit arrangement to insure full payment of executive pensions in the General Employees Retirement Plan. See City Code Section 120. 401. The excess benefit arrangement drafted for the Senior Staff plan exactly follows the City plan.

An excess benefit arrangement works as follows: If some aspect of the pension benefit exceeds the salary or gross benefit maximums (as determined by the actuary) the additional amount cannot be paid from the staff pension. Instead, it is paid directly by the Fund as an expense. Each year, as the inflation index in the Tax Code increases, the ceiling payable from the staff pension will increase and the excess amount declines. It is not an increase in the benefit ultimately payable. The cost to the Police and Fire Fund is the same. To the extent the excess payment lowers the liability in the staff plan, that actuarial savings is recaptured by the Police and Fire Fund.

The proposed plan amendment dedicates any such savings to the unfunded accrued liability of the Police and Fire Fund, thereby inuring to the ultimate benefit of the City.

I trust this answers the questions.

Sincerely,

Robert D. Klausner

ROBERT D. KLAUSNER

RDK:ldm

W:\Wdocs\LLP\900342\GM\00062896.WPD