

**HANDED OUT AT BOARD
OF TRUSTEE MEETING**

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: Cecil Field Firefighters

Date: June 17, 2016

Introduction.

Section 121.107, Ordinance Code, entitled, "Credit for broken service, continuous service, partial years transferability, and service as a Florida State Certified Police Officer or Firefighter," permits and regulates adding service time for service with other agencies. Subsection(d) permits, among other time tie-ins, "service with another government in Duval County." At this time, some members of the fund who now work for the Fire Department as firefighters previously worked for the federal government at Cecil Field. The question has been raised whether these firefighters may connect their time while working for the federal government.

Question Presented.

Whether Section 121.107 permits firefighters who worked as firefighters for the federal government, but not in the military, to purchase time service (up to five years) for that service.

Short Answer.

Section 121.107 does not permit firefighters who worked as firefighters for the federal government, but not in the military, to purchase time service (up to five years) for that service.

Discussion.

In 2009, the Legislature amended Section 175.032(4)(c) to read as follows:

(c) Credited service under this chapter shall be provided only for service as a firefighter, as defined in subsection (8), or for military service and ~~does shall~~ not include credit for any other type of service. A municipality may, by local ordinance, or a special fire control district may, by resolution, provide for the

pension system. To be entitled to pension credit, a Member shall make application to the Board at any time prior to retirement. Furthermore, the employee shall pay into the Pension Fund a sum equal to 20 percent of his or her current monthly salary multiplied by the number of months (60 months maximum) for which credit is being sought, on such terms as the Board shall determine.

Section 121.107(d). Ordinance 2015-304-E added the underlined provisions. Prior to the adoption of 2015-304-E, Section 121.107(d) stated, "Any active Member of the Police and Fire Pension Fund who is not a retiree and who has not attained vested status under any other governmental retirement system shall be entitled to purchase time service credit for up to five years of full time employment as a Police Officer under the provisions of F.S. Ch. 943, or as a certified Firefighter under the provisions of F.S. Ch. 633." (Emphasis added). The references to Chapters 943 and 633 modify the phrase "any other governmental retirement system" to ensure that the time-service connection applied to persons working for local governments working in the state. The Council adopted the new language referring to "another government in Duval County" to create a sub-class of firefighters and police officers referenced in the first sentence in subsection(d). This subclass includes those who worked for Jacksonville Beach, Neptune Beach, Atlantic Beach and Baldwin.

The first sentence of subsection(d) prohibits persons who are vested in another plan from purchasing time-service credit for years in that plan. The amendment in 2015-304 allows those vested in a plan from one of the local governments in Duval County to purchase time-service credits even if they are vested in another plan, as long as those purchased years are not also used for entitlement for benefits.

When the amendment was discussed in the City Council committees, as an amendment to proposed Ordinance 2104-386, the Council Members left no doubt that they sought to limit this modified right to purchase time-service credit to the governmental bodies wholly within Duval County, i.e., the Beaches, Baldwin and the independent agencies. For a half an hour or more the committee members sought assurance that the amendment be limited to those persons who worked for those governments. They expressed concern over the breadth of a right of an employee of any other government to purchase time service credit. This is justified, in part, due to the fact that the taxpayers of these communities may have paid for police or fire services in the past, and they pay taxes to the City of Jacksonville as well.

Finally, the language in the amendment is "service with another government in Duval County." It does not say "service in Duval County with another government in Duval County." Both the federal government and the state government are "in" Duval County. The sentence does not specifically require being a firefighter or police officer in Duval County. Consequently, either this new sentence refers to solely to the Beaches and Baldwin, or it refers to any person in any location who happened to be certified under Chapters 633 or 943 and also worked for the federal

JAX BEACH TIME SERVICE CONNECTIONS

MEMBER NAME	DATE OF APPLICATION	TIME PURCHASED	8% RATE	20% RATE	DIFFERENCE	AMOUNT PAID		CREDITED SERVICE
						TO DATE		
ALLOUSH, Tom S.	09/09/16	2 y, 8 m, 5 d	\$ 11,399.84	\$ 28,499.60	\$ 17,099.76	\$ 7,464.09	OR	
BROWN, Christopher L.	10/18/17	1 y, 17 d	\$ 4,023.83	\$ 8,047.67	\$ 4,023.84	\$ 185.70	OR	6 m, 9 d
EAVES, Mitchell D.	09/06/17	3 y, 2 d	\$ 12,176.11	\$ 30,440.27	\$ 18,264.16	\$ 1,030.26	OR	14 m, 13 d
GARRIOTT, Jeremy P.	04/12/17	10 m, 4 d	\$ 9,288.25	\$	(9,288.25)		OR	
GINTHER, Paul D.	04/16/17	5 y	\$ 13,925.76	\$ 34,814.40	\$ 20,888.64	\$ 10,329.20	OR	9 m, 18 d
HARPER, Christopher E.	09/26/17	7 m, 11 d	\$ 4,051.37	\$ 10,128.42	\$ 6,077.05	\$ 311.60	OR	3 m
HOLTSMAN, Frank R.	05/01/17	5 y	\$ 24,796.94	\$ 61,992.60	\$ 37,195.66	\$ 24,796.94	OR	2 y
RISKA, Steven A.	01/30/17	4 y, 10 m	\$ 34,311.22	\$ 85,778.06	\$ 51,466.84	\$ 34,311.22	OR	1 y, 11 m, 6 d

JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES MEETING

DATE: June 17, 2016
TIME: 9:01 to 11:29 a.m.
PLACE: Jacksonville Police and Fire Pension Fund
One West Adams Street
Suite 100
Jacksonville, Florida 32202

BOARD MEMBERS PRESENT:

Larry Schmitt, Board Chairman
Richard Tuten, III, Secretary
Richard Patsy, Trustee
William Scheu, Trustee
Willard Payne, Trustee

STAFF PRESENT:

Beth McCague, Interim Executive Director
Debbie Manning, Executive Assistant
Devin Carter, Chief Financial Officer
Paul Daragjati, Board Counsel
Steve Lundy, Pension Benefits Specialist

CITY REPRESENTATIVES PRESENT:

Tommy Hazouri, City Council Liaison
Joey Greive, City Fund Treasurer
Steve Durden, General Counsel's Office

GUESTS:

Robert Dees, Esq.
Randy Wyse, Jacksonville Association of
Firefighters

These matters came on to be heard at the time and
place aforesaid, when and where the following
proceedings were reported by:

Denice C. Taylor, FPR
AAA Reporters
steno@comcast.net
904.354.4789

1 time served included in their pension.

2 And over time we have said no, that is not
3 allowable, but we went to general counsel to get
4 something in writing for them, and we have that
5 today.

6 Mr. Durden.

7 MR. DARAGJATI: And after Mr. Durden is
8 done, we still have to give the update on the
9 securities litigation. We skipped that one. Not
10 a big deal.

11 CHAIRMAN SCHMITT: Oh, I'm sorry. Yeah.

12 MR. DARAGJATI: We can go back around after
13 Mr. Durden is done.

14 CHAIRMAN SCHMITT: Will do. Okay.

15 MR. DURDEN: Briefly, the question came up
16 about Cecil Field firefighters. There's Section
17 121.107 of the ordinance code is the part that
18 discusses the variety of ways to earn time
19 service. You can purchase it. You can have it
20 by transfer, et cetera.

21 And in 2015-304 there was an amendment done
22 that referenced the concept of government in
23 Duval County. Well, based on the discussion at
24 the meeting and otherwise, what that meant was
25 beaches involvement. The term "government in

1 Duval County" refers to those governments in
2 Duval County.

3 So what had happened is, among the things --
4 what the ordinance code has is oversimplified,
5 and there's exceptions in this and that; but
6 generally speaking, if you once worked for the
7 Consolidated City of Jacksonville and left and
8 then you joined the Police and Fire Pension Fund,
9 then you can buy your time.

10 And then there's some exceptions on how much
11 you can buy and whether you were vested, but
12 that's generally.

13 In that group of working for the
14 consolidated government, that includes the
15 independent agencies, and also because of the
16 take-over of the Atlantic Beach Fire Department,
17 they also have that same right. And I don't
18 think very many people do that any more because
19 that take-over was so many years ago.

20 But, hypothetically, they're kind of -- this
21 is this group of people that can just simply
22 purchase time subject to some restrictions.

23 There's another group of people who, if
24 you're currently working for the City of
25 Jacksonville Consolidated Government and you're

1 in the General Employees Pension Fund, you can
2 transfer time.

3 Exactly how that works and what the
4 ramifications of that are a little bit more
5 complex, given the change in Group 1, Group 2.
6 But as far as transfer, that's certainly
7 permissible.

8 But, finally, there is another section that
9 said, Okay, we also want to protect firefighters
10 and police officers around the state. And
11 there's Subsection D of that ordinance provides a
12 very specific reference for allowing people who
13 were not vested, police officers and
14 firefighters, who worked for -- it says "other
15 governmental entities," and I'll explain that for
16 a second.

17 Other governmental entities who then come in
18 and work for the police and fire -- become
19 members, they're entitled to purchase five years
20 of time, up to five years, as long as they
21 weren't previously vested in another plan,
22 because some plans might have one-year vesting
23 and two-year vesting. So there's this limit.

24 All right. There was a section that then
25 said, You know what? What we want to do is, if

1 you worked in a government within Duval County as
2 a police officer and firefighter, we will not
3 only allow you to transfer -- we'll allow you to
4 purchase the time. In fact, we'll allow you to
5 purchase the time even if you were vested as long
6 as you don't later use that for vesting.

7 In other words, you could buy out. So,
8 generally, if you're a police officer and a
9 firefighter for another local government and
10 you're vested, you can't buy your time.

11 But if you're in this small group of
12 governments in Duval County and you're vested,
13 you could give up your vested rights and purchase
14 your time.

15 So it was an exception to the rule to allow
16 the people -- Atlantic Beach, Jacksonville Beach,
17 Neptune Beach's involvement to the extent people
18 had worked there -- could come be police officers
19 and firefighters and buy their time and get rid
20 of their old pension up to five years.

21 The argument for the firefighters who worked
22 for the Department of Defense -- I believe that's
23 who they worked for -- was that the term
24 "government in Duval County" meant any government
25 that happened to have an office in Duval County.

1 Then my memo attempts to go through the
2 variety of reasons why that doesn't make any
3 sense based on the actual -- if you look at
4 government in Duval County.

5 Well, the state governments in Duval County,
6 if you look carefully at the words, it doesn't
7 actually say that you had to actually work in
8 Duval County. It just simply says that the
9 government had to be in Duval County and you were
10 a firefighter certified or a police officer
11 certified by the state.

12 So, hypothetically, if they're correct, you
13 could be working as a firefighter in Germany for
14 the Department of Defense because the Department
15 of Defense is also in Jacksonville.

16 The better answer is clearly that -- and
17 particularly based on the terms of the discussion
18 in the adoption of 2015-304. The better meaning
19 is, it is restricted to those governments within
20 Duval County.

21 That's what they meant when they gave this
22 special benefit. It's not a big benefit, but it
23 is a slightly special benefit for the people who
24 worked for these governments in Duval County,
25 allowing them to get rid of their old pension if

1 they chose to, up to five years of it, to add
2 that to the time.

3 It's a special benefit that not everybody
4 has, but it makes sense in light of the fact that
5 there are overlapping taxpayers throughout the
6 county, meaning the people in Jacksonville
7 Beaches and Baldwin pay taxes to the City of
8 Jacksonville, et cetera, et cetera.

9 So it made sense. That's what I believe was
10 the intent. Please take a look at the memo, and
11 for anything -- as I'm going through this that
12 I've certainly learned in dealing with -- working
13 with Beth on this, I will read something, she
14 will read something. She's very good at pointing
15 out, Hey, I think you may have missed something.

16 This is -- but I don't think the opinion is
17 going to change, but just in case you-all see
18 something, let me know. I mean, no one is
19 perfect in statutory construction, but I believe
20 that's the correct answer.

21 So for the firefighters who worked in the
22 Department of Defense and Cecil Field, they are
23 not entitled to the buy-back purchase.

24 MS. McCAGUE: Thank you, Stephen.

25 So as a part of this examination of the

1 firefighters, Stephen was able to clarify for us
2 a couple of other issues that he mentioned, that
3 we talked at the Board level before about.

4 One is, for those people who work outside of
5 the county who were hired as firefighters and
6 police officers, could they buy time and what
7 group were they in?

8 The answer is they can buy up to five years'
9 worth of time, and they are in Group 2 if they
10 started after June of last year. So that was one
11 of the outstanding items.

12 We still are working for clarification on
13 transfer of city employees, as Stephen mentioned.

14 And do you also want to talk about -- I had
15 mentioned before, we had several individuals who
16 are in the process of buying time and they
17 completed that transaction before June 19 of last
18 year, they would have been in Group 1A.

19 But because they were on an installment
20 basis in several cases, and in one case a check
21 from Great Western Retirement had not come in,
22 they were considered -- we were told by Office of
23 General Counsel that they should be Group 1B.

24 And we've worked with Stephen and now he has
25 carefully looked at this and said -- Stephen?

1 you worked in a government within Duval County as
2 a police officer and firefighter, we will not
3 only allow you to transfer -- we'll allow you to
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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: Cecil Field Firefighters

Date: June 17, 2016

Introduction.

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Short Answer.

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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 or Duval County, or is not a retiree nor has attained vested status under the Florida Retirement System or the City of Atlantic Beach, 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.