

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE**

CINDY A. LAQUIDARA
GENERAL COUNSEL

DERREL Q. CHATMON
CHIEF DEPUTY GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202

ASHLEY B. BENSON
JODY L. BROOKS
WILLIAM B. BURKETT
WENDY E. BYNDLOSS
DAVID J. D'AGATA
WILLIAM W. DEEM
STEPHEN M. DURDEN
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GABY YOUNG

April 28, 2014

The Honorable John R. Crescimbeni
Jacksonville City Council
City Hall at St. James Building
117 W. Duval St., Suite 425
Jacksonville, Florida 32202

Re: Changing Pension Board Composition

Dear Council Member Crescimbeni:

I. Background.

The Florida Legislature, pursuant to Chapter 18615, Laws of Florida, 1937, created the Jacksonville Police and Fire Pension Fund. ("1937 Pension Fund"). In 1990, the Legislature, pursuant to Chapter 90-442, Laws of Florida, added Article 22 to the Jacksonville Charter. This new Article 22 created the independent agency of the City of Jacksonville (see, Section 22.11, Charter) known as the Jacksonville Police and Fire Pension Board and continued the 1937 Pension Fund. Chapter 22 specifically defines the membership on the Board. *Section 22.02, Charter*. The City Council appoints as board members two legal residents of the City. Police officers elect one member. Firefighters elect one member. The first four select the fifth.

Chapters 175 and 185 of the Florida Statutes govern the operation of police pension funds and firefighter pension funds. Chapter 2011-216, Laws of Florida amended Sections 175.061(1)(b) and Section 185.05(1)(b) in order to permit a municipality to amend the percentage of municipal representation of a police and fire "board of trustees operating a local law plan on June 30, 1986." The question arises whether the City Council of the City of Jacksonville may, by an ordinance which is ratified by referendum, amend the make-up of the Jacksonville Police and Fire Pension Board.

II. Questions Asked.

1. Whether the City Council may, by ordinance, amend the composition of the Jacksonville Police and Fire Pension Board of Trustees.

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2. Whether the City Council may, by an ordinance, ratified by referendum, amend the composition of the Jacksonville Police and Fire Pension Board of Trustees.

III. Short Answer.

1. While ultimately the interpretation of state law lies with the courts, the better weight of analysis would hold that, yes, the City Council may amend, by ordinance, the composition, of the Board of Trustees.

2. Yes, the City Council may, by an ordinance, ratified by referendum, amend the composition of the Jacksonville Police and Fire Pension Board of Trustees.

IV. Discussion.

Chapter 22 of the Jacksonville Charter creates the Jacksonville Police and Fire Pension Fund Board of Trustees and expressly defines its membership. Sections 175.061(1)(b) and 185.05(1)(b), Florida Statutes, each contain the following language:

With respect to any board of trustees operating a local law plan on June 30, 1986, this paragraph does not permit the reduction of the membership percentage of police officers or police officers and firefighters. However, for the sole purpose of changing municipal representation, a municipality may by ordinance change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of police officers, or police officers and firefighters, or the membership percentage of the municipal representation.

The question is whether, under the authority of Florida Statutes, Sections 175.061(1)(b) and 185.05(1)(b), the City Council may amend the membership of the Jacksonville Police and Fire Pension Fund Board of Trustees.

The language of those statutes appears to apply to the Jacksonville Police and Fire Pension Fund Board of Trustees. The statutes apply to any board of trustees which was operating a local law plan (such as the City's Police and Fire Pension Fund) on June 30, 1986. Although the Florida Legislature did not create the independent agency status of the Jacksonville Police and Fire Pension Fund Board of Trustees until 1990, the Board is a continuation of the Board that has been running the Pension Fund since 1937. The composition of the Board has changed over the years, but its duties and obligations to the fund have remained.

Section 175.061(1)(b) provides, "With respect to a board of trustees operating a local law plan on June 30, 1986, this paragraph does not permit the reduction of the membership percentage of firefighters, or of firefighters and police officers where a joint or mixed fund exists. However, for the sole purpose of changing municipal representation, a municipality *may by ordinance* change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of firefighters, or firefighters and police officers, or the membership percentage of the municipal representation." (Emphasis added.) Since

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Section 22.07 of the Charter provides that the Board continued its existence without a break in continuity, the Chapter 22 Board was operating a "local law plan" on June 30, 2006. While the membership has changed and while the body responsible for selecting membership has changed, the "board of trustees" has operated the fund for more than 70 years. It is the opinion of the Office of General Counsel ("OGC") that these changes did not create new boards, but, rather, they continued the Board with different members. Viewing the Board as a continuously operating board is consistent with the fact that the current pension plan is a continuation of the 1937 Plan. If the Board is a continuation of the past boards, then Section 175.061(1)(b) permits the City Council to amend the composition of the Board by ordinance.

Even assuming that Section 175.061(1)(b) does not apply to the JPPFF, then Section 16.03 of the Charter supports the power of the City Council to amend the composition of the Board. Section 16.03 expressly permits the City Council to amend the composition of the Board. Specifically, Section 16.03 permits the City Council to decide "which officers of the consolidated government are responsible for the administration of the [pension] plans." Nothing in Chapter 22 of the Charter removes this power from the City Council, and nothing in Chapter 22 conflicts with this power. Further supporting the efficacy of Section 16.03 is the fact that the Legislature readopted both Section 16.03 and Chapter 22 of the Charter when it readopted the entire Charter in Chapter 92-341, Laws of Florida.

One might argue that Section 175.061(1)(b), Florida Statutes, and Section 16.03, Jacksonville Charter, modify Section 3.01 of the Charter. Section 3.01 is a general grant of power to amend the Charter, whereas Section 175.061(b) and Section 16.03 are specific grants of power to control the composition of the Board. Neither section refers to the Charter. Instead, they each permit the City Council to amend the composition of the Board whether or not the Board is within the Charter. Consequently, it could be concluded that Section 16.03 of the Charter and the Florida Statutes permit the Council to amend the composition of the Board by ordinance.

On the other hand, it may be argued that Section 3.01 limits the City Council's power to propose an amendment to the Charter as it relates to the Board. While that section grants the City Council power to amend the Charter, it also requires approval by voter referendum for any City Council adopted amendment "relating to appointive boards." Consequently, it might be argued that Section 3.01 requires an ordinance amending the composition of the Board to be approved by referendum, not withstanding any other provisions.

The only contrary opinion is contained in a letter from Keith Brinkman, Bureau Chief, Local Retirement Systems, Department of Management Services, to Jim Linn, the City's special counsel. See Letter of June 29, 2012, attached as Exhibit A. In that letter, Mr. Brinkman suggested, without analysis, that because the Legislature created the Board of Trustees by special act "any change in the makeup of the board *may* have to be approved by the Legislature." *Id.* I believe this suggestion is inconsistent with the express grant of authority given to the City Council to amend almost all the Charter, either by ordinance or by ordinance ratified by referendum. In particular, Mr. Brinkman's suggestion is inconsistent with the City Council's power to amend the composition of the Board.

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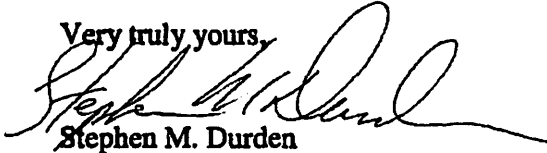
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Mr. Brinkman only suggested the possibility that only the Legislature could amend the makeup of the Board. The better answer is that the City Council has the power to amend the composition of the Board, by ordinance; although, it may be that Section 3.01 of the Charter requires a referendum. Admittedly, this opinion, as it relates to Section 175.061(1)(b) is an interpretation of state law, and not all persons would necessarily agree that Section 175.061(1)(b) applies to the Board. Consequently, the more conservative approach would be to amend the structure of the Board by ordinance, approved by referendum.

V. Conclusion.

The City Council may amend, by ordinance or by ordinance ratified by referendum, the membership of the Police and Fire Pension Fund Board of Trustees, the safer course being to have the amendment approved by referendum. I trust that this opinion provides the guidance you seek. Of course, I am available to discuss this with you at your convenience.

Very truly yours,



Stephen M. Durden

Cc: Cindy A. Laquidara, General Counsel
Legal Opinion File