RESOLUTION NO: 2023-04-21-X-A

A RESOLUTION APPROVING AND AUTHORIZING LEGISLATION TO BE CO-INTRODUCED BY COUNCIL MEMBER WHITE AND THE JACKSONVILLE POLICE AND FIRE BOARD OF TRUSTEES ("BOARD") PURSUANT TO SECTION 22.07 OF THE CITY OF JACKSONVILLE CHARTER ("CITY CHARTER") TO AMEND SECTION 22.12 (RETIREMENT FOR BOARD EMPLOYEES) OF THE CITY CHARTER TO BE CONSISTENT WITH THE ORDER GRANTED ON JUNE 6, 2020, IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA, CASE NO. 2018-CA-5925, REGARDING THE BOARD'S AUTHORITY TO CREATE THE SENIOR STAFF VOLUNTARY RETIREMENT PLAN; AUTHORIZING THE EXECUTIVE DIRECTOR-PLAN ADMINISTRATOR TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THIS RESOLUTION; DIRECTING THE OFFICE OF GENERAL COUNSEL TO FILE THE LEGISLATION ATTACHED HERETO

WHEREAS, pursuant to Ordinance 2015-683-E, the City Council of the City of Jacksonville ("City Council") enacted an ordinance which, among other things, prohibited the Jacksonville Police and Fire Pension Board of Trustees (the "Board") from (i) creating any pension or other retirement plan; and (ii) administering any pension or retirement plan other than the Jacksonville Police and Fire Pension Fund (the "2015 Ordinance"); and

WHEREAS, the 2015 Ordinance was based on a binding legal opinion issued by a former General Counsel of the City of Jacksonville ("City"), which stated that the Board did not have the authority to create or administer the Senior Staff Voluntary Retirement Plan (the "SSVRP") (the "First SSVRP Binding Legal Opinion"); and

WHEREAS, after the enactment of the 2015 Ordinance, General Counsel Opinion 16-01 was issued by a former General Counsel on April 20, 2016, which opinion in part also stated that the Board did not have the authority to create or administer the SSVRP (the "Second SSVRP Binding Legal Opinion"). The First SSVRP Binding Legal Opinion and the Second SSVRP Binding Legal Opinion, copies of which are attached hereto as **Exhibit A**, shall be collectively referred to herein as the "SSVRP Binding Legal Opinions"; and

WHEREAS, after the enactment of the 2015 Ordinance, litigation ensued between SSVRP participants, as the plaintiffs, and the City and the Board, as co-defendants; and

WHEREAS, on June 6, 2020, an order was issued in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida (Case No. 2018-CA-5925) partially granting the plaintiffs Motion for Summary Judgment and holding that the Board, pursuant to Section 22.04(e) of the City Charter, had the authority to fix the compensation of its employees, which compensation included the creation of the SSVRP as an employee benefit (the "Order"); and

WHEREAS, a copy of the Order is attached hereto as **Exhibit B**; and

WHEREAS, the current General Counsel has reviewed the Order and determined that the SSVRP Binding Legal Opinions were overruled by the Order pursuant to Section 7.01 of the City Charter regarding those aspects of the opinions holding that the Board did not have the authority to create or administer the SSVRP; and

WHEREAS, the current General Counsel concurs with the Board that Section 22.12 of the City Charter should be amended to be consistent with the Order by removing Subsections 22.12(a) and (b) of the City Charter; and

WHEREAS, considering the forgoing, Council Member White and the Board desire to amend Section 22.12 of the City Charter to be consistent with the Order and the Board's authority in Section 22.04(e) of the City Charter; now therefore,

BE IT RESOLVED, by the Board:

Section 1. **Recitals**. The Board finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

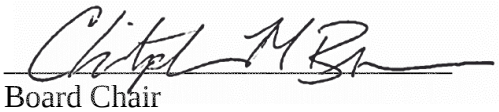
Section 2. **Legislative approval**. The Board hereby approves and authorizes legislation in the form attached hereto as **Exhibit C** (the "Legislation") to be co-introduced by Council Member White and the Board pursuant to Section 22.07 (Amendatory power) of the City Charter to amend Section 22.12 (Retirement for board employees) of the City Charter to be consistent with the Order.

Section 3. **Executive Director-Plan Administrator Authorization**. The Board authorizes the Executive Director-Plan Administrator to obtain and/or execute all documents necessary to effectuate this resolution.

Section 4. **Office of General Counsel**. The Board directs the Office of General Counsel, in consultation with the Executive Director-Plan Administrator, to file the Legislation with the City Council Legislative Services Division on or before May 3, 2023. The Office of General Counsel is authorized in consultation with the Executive Director-Plan Administrator to correct scrivener's errors in the Legislation as needed prior to filing.

Section 5. **Effective Date**. This Resolution shall become effective upon its approval by the Board on April 21, 2023.

ADOPTED:



Board Chair

05-03-2023

DATE

VOTE: In Favor: 4 Opposed: 1 Abstained: 0
(5 Members Present)

EXHIBIT A

SSVRP BINDING LEGAL OPINIONS

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 630-1728

MEMORANDUM

TO: Honorable John Crescimbeni, Chair, Finance Committee, City Council

FROM: Cindy A. Laquidara, General Counsel

RE: **Authority of Board of Trustees of Police and Fire Pension Fund to Establish the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan**

DATE: August 10, 2012

You have asked for a legal opinion as to whether the Board of Trustees of the Jacksonville Police and Fire Pension Fund ("Board") was authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan ("Senior Staff Plan").

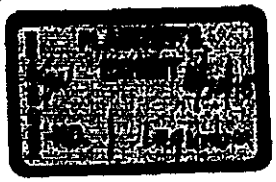
As you know, the City's Director of Ethics Compliance and Oversight ("Director") is gathering documents from and making inquiries to the Board, as to the details of the creation and maintenance of the Senior Staff Plan. I am not yet privy to the information that will be received and made public and available by the Director, and caution you that this opinion will be updated subject to an analysis of that information and any additional research necessitated, if any, by such information.

1. **Question Asked.**

   Was the Board of Trustees of the Jacksonville Police and Fire Pension Fund authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan?

2. **Short Answer.**

   The Board of Trustees of the Jacksonville Police and Fire Pension Fund was not authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan.



Discussion.

A. Article 16 (Retirement and Pension Benefits) of the Charter establishes the pension system of the Consolidated Government, and does not authorize any agency other than the Council to amend existing plans or create new plans.

The pension plans of the Consolidated Government are identified in Article 16 (Retirement and Pension Benefits) of the Charter. Article 16 provides in Section 16.01 that all officers and employees of the Consolidated Government shall be members of either the 1937 police and fire pension fund or the 1937 general employee pension fund. Article 16 provides for no other pension plans.

Section 16.01 of the Charter authorizes the Council to amend the pension system to provide for separate classifications. Nothing in Article 16 authorizes any other agency (especially an agency with no taxing or rate making power) to create a pension fund or classification for employees employed by that agency.

B. Article 22 (Jacksonville Police and Fire Pension Board of Trustees) establishes the Board for the purpose of administering the Police and Fire Pension Fund, not to create pension plans.

Article 22 (Jacksonville Police and Fire Pension Board of Trustees) establishes the Board of Trustees to administer the Police and Fire Pension Fund. Its Section 22.10 "declaration of purpose" calls for the Board to "... be considered a governmental unit responsible for the management of an irrevocable trust ...". Its purpose is to manage an irrevocable trust funded by the City Council, not to create a new trust for separately identified employees to be funded by the City Council. Managing a trust is a limited authorization of power, and does not carry with it the exercise of additional powers beyond that necessary for managing the body of the trust.

While Section 22.04(c) authorizes the employment and fixing of compensation of staff, there is nothing within the powers section that suggests that the administrators of this fund have authority to *create* a new pension fund within the already authorized 1937 Police and Fire Pension Fund and thus to modify a plan created by ordinance, and Charter.

Section 22.07 (Amendatory power) confirms the limited power of the Board:

"(a) ... nothing herein shall empower the board to amend the provisions of the pension plan without the approval of the Jacksonville City Council."

(c) The benefit plan administered by the board shall be as established by ordinance or charter provision, or by special act or general law of the Legislature ..."
(All underlining added)

It is clear from Section 22.07 that it is the City Council, the taxing authority of the Consolidated Government and insurer of the fund, that is solely empowered to create and amend pension plan benefits for employees. It is also clear that incorporating the Senior Staff Plan within the 1937 Police and Fire Pension Fund is an unauthorized amendment of the 1937 Police and Fire Pension plan.

3. Conclusion

Based on the foregoing, it is my conclusion that there was no authority for the Police and Fire Pension Board of Trustees to create the Senior Staff Plan within the 1937 Police and Fire Pension Plan.

I look forward to discussing this issue at greater length with the Council after my review of documentation and further research is complete. Such discussion will address, among other things, the future of the Senior Staff Plan. In the interim, please do not hesitate to contact me if you have any other concerns.

CC: Council President
Mayor
Chairman, Police and Fire Pension Fund
Executive Director, Police and Fire Pension Fund
Director, Office of Ethics, Compliance, and Oversight

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

JASON R. GABRIEL*
GENERAL COUNSEL

ASHLEY B. BENSON
JODY L. BROOKS
WILLIAM B. BURKETT
WENDY E. BYNDLOSS
DERREL Q. CHATMON
DAVID J. D'AGATA
JULIA B. DAVIS
WILLIAM W. DEEM
STEPHEN M. DURDEN
CRAIG D. FEISER
SONDRA R. FETNER
LOREE L. FRENCH
CHRISTOPHER GARRETT
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GAYLE PETRIE
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STEPHEN J. POWELL
TIFFINY DOUGLAS SAFI
JOHN C. SAWYER, JR.
MARGARET M. SIDMAN
SANDRA P. STOCKWELL
JASON R. TEAL
ADINA TEODORESCU
MICHAEL B. WEDNER
GABY YOUNG

*BOARD CERTIFIED CITY, COUNTY AND LOCAL GOVERNMENT LAW

April 20, 2016

Via Hand Delivery

The Honorable Lenny Curry, Mayor
City of Jacksonville
117 W. Duval Street, Suite 400
Jacksonville, FL 32202

Re: General Counsel Legal Opinion 16-01; Authority of Board of Trustees of Police and Fire Pension Fund to Establish the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan and Related Legal Issues

Dear Mayor Curry:

This letter is written in response to your recent request for a legal opinion regarding the status of the Jacksonville Police and Fire Pension Fund Senior Voluntary Retirement Plan ("SSVRP") with the understanding that you have been briefed by your Administration as to all pertinent matters concerning the well-being of the City. Because the creation of the SSVRP and the events that unfolded when its existence was discovered predate your term as Mayor, a brief historical account is useful to provide an understanding of the current circumstances.

Furthermore, Mayor, you have inquired as to what the City can do to rectify issues related to the SSVRP. The scope of your authority, as the consolidated government's chief executive and administrative officer, is set forth below.

Office Telephone	Writer's Direct Line	Facsimile	Writer's E-Mail Address	Office Web Site
(904) 630-1700	(904) 630-1724	(904) 630-1316	JGabriel@coj.net	GeneralCounsel.coj.com

BRIEF HISTORY

While PFPF Board employees have always participated in, and currently participate in, the City's General Employees Retirement Plan[1], in 2000, the Jacksonville Police and Fire Pension Fund Board of Trustees ("PFPF Board" or "Board") attempted to devise a special defined benefit plan for the interest of a few select employees, by replacing a money purchase retirement account at the time with a proposed defined benefit pension plan that is now known as the SSVRP. The select few employees for which the SSVRP was created decided to not participate in the General Employees Retirement Plan because it would have meant, among other things, that such employees would be unable to continue receiving pension benefits for prior City service.

In 2012, the City (the ultimate insurer and taxing authority responsible for funding all City pension plans) became aware of the SSVRP during one of the City Council Auditor's routine audits.[2] Shortly thereafter, the City Council Finance Committee Chair requested an opinion from the General Counsel regarding whether the Board was authorized to create the SSVRP. On August 10, 2012, then General Counsel Cindy A. Laquidara issued a binding legal opinion in which she held that the Board was not authorized to create the SSVRP. A copy of General Counsel Legal Opinion 12-03 is attached hereto.

To briefly summarize, that opinion held that: (1) Article 16 (Retirement and Pension Benefits) of the Charter establishes the entire pension system of the Consolidated Government and does not authorize any agency other than the Council to amend existing plans or create new plans, and (2) Article 22 (Jacksonville Police Fire and Pension Board of Trustees) establishes the PFPF Board for the purpose of solely *administering* the Police and Fire Pension Fund, and *not* for any other purpose such as creating new or amendatory pension plans or classifications. Further, the opinion found that by the Charter's very own terms (Section 22.07), nothing empowers the Board to amend the provisions of the pension plan "without the approval of the Jacksonville City Council" and that the benefit plan administered by the Board shall be "as established by ordinance or charter provision, or by special act or general law of the legislature...."[3]

[1] Article 16 of the City Charter establishes the City's retirement and pension benefits. Section 16.01 requires that all officers and employees of the consolidated City of Jacksonville be members of either the 1937 police and fire pension fund, as established under chapter 18615, Laws of Florida, or the 1937 pension fund for employees of the City of Jacksonville, as established under chapter 18610, Laws of Florida, and further provides that the retirement system encompassing these two pension funds "shall be the retirement and pension system for the consolidated government."

[2] *See* pp. 16-20 of Council Auditor's Office Police and Fire Pension Fund Audit, Report #736, dated November 21, 2012.

[3] *See also*, 1969 OGC Legal Division Advisory Opinion No. 254 which discusses whether funds of two systems having common trustees could be commingled. That opinion held that trustees do not have the right to invest moneys in different pension fund systems in total and then prorate the earnings back to the funds based on each fund's equity.

Following the issuance of the August 2012 binding legal opinion, the General Counsel sent a letter to the PFPF Board Chair in September 2012, indicating the City's surprise to learn that the PFPF Board had created its own new defined benefit pension plan for the benefit of certain select employees, and informing the Board that the SSVRP was not authorized and that the City was seeking to recover all contributions to the SSVRP made with public funds. The General Counsel further directed the Board to terminate any further alleged obligations to the employees. In March 2013, a second letter was sent to the PFPF Board Chair stating:

> This is to put the Board of Trustees on notice that the Board is to take action to cease making payments to beneficiaries under the Senior Staff Plan and to cease making contributions to such Plan. In addition, within thirty days of receipt of this letter, please provide to the City a plan for recovery and repayment to the Police Fire and Pension Fund those monies taken from the Police and Fire Pension Fund for funding of the Senior Staff Plan.

Both letters requested numerous specific public records be produced by the Board for the purpose of assisting the City in the reconciliation of funds. Rather than follow the legal advice of their chief legal officer, the City's directives and requests were each ignored by the PFPF Board. The City of Jacksonville's Charter does not authorize the PFPF Board to ignore the binding legal opinions and directions of the General Counsel.

The City Council over time has expressed its opinion on the matter of the SSVRP, passing resolutions in 2012 and 2014 authorizing the Office of General Counsel to commence litigation to determine, among other things, the legal validity of the establishment of the SSVRP.[4] Additionally, on or around September 4, 2013, during the 2013/14 budget process, the Finance Committee of City Council proposed, and eventually the full City Council approved, a budgetary amendment to reduce the PFPF budget by an amount equivalent to the employer pension contribution the PFPF pays into the SSVRP.

Throughout this time period, pension reform efforts were underway as well as efforts to settle this issue without the need for litigation. While the pension reform efforts were successful in many regards, efforts to resolve the SSVRP dispute were unsuccessful. In fact, during pension reform discussions, Council specifically reserved the right to further dispute the SSVRP matter. Therefore, on November 20, 2015, the City filed suit against the PFPF Board and John Keane[5], requesting the Court, among other things, to enter a declaratory judgment as to the Board's authority to create the SSVRP. On January 26, 2016, proposed Ordinance 2016-80 was introduced, proposing a potential settlement agreement to resolve

[4] *See* Resolutions 2014-769-A and 2015-83-A.

[5] *City of Jacksonville v. Jacksonville Police and Fire Pension Board of Trustees, John Keane et al.*, 16-2015-CA-007380.

the litigation. The Council postponed the bill indefinitely pending further study and consideration of the issues.

CITY AS FUNDING SOURCE AND AUTHORITY TO RECTIFY UNLAWFUL PLAN

In addition to the express Charter requirements designating City Council as the only authorized body to amend or create defined benefit pension plans or classifications in the City's retirement system, a City agency (such as the PFPF) that has no ability to generate revenue and is completely dependent on appropriations and contributions of the City and City employees, cannot lawfully obligate the City to fund a defined benefit pension plan for the agency's employees without City Council approval. This issue is critical due to the nature of defined benefit pension plans. Under state law, defined benefit pension plans obligate the plan sponsor to fund the plan on a sound actuarial basis - which includes the obligation to pay off unfunded actuarial accrued liabilities over a period of not more than 30 years. In essence, defined benefit pension plans involve a form of debt. In the judgment of the City's pension legal counsel, only the entity that is ultimately responsible for paying off the debt has the legal authority to approve the creation of a defined benefit plan. In this case that entity is the City, and the governing body is the City Council.

The City, as the ultimate insurer and taxing authority responsible for funding City pension plans, has the power to halt or modify unlawfully funded pension payouts being made by the City.[6]

BINDING LEGAL AUTHORITY OF THE GENERAL COUNSEL

Section 7.02 of the Jacksonville City Charter provides that the General Counsel shall be the chief legal officer for the entire consolidated government, including its independent agencies. It states further:

> Any legal opinion rendered by the general counsel shall constitute the final authority for the resolution or interpretation of any legal issue relative to the entire consolidated government and shall be considered valid and binding in its application unless and until it

[6] *See, e.g., Hill v. City of Los Angeles,* 24 Cal.App.3d 18 (Cal. 2d Dist. Ct. App. 1972); *Wheeler v. City Santa Ana,* 185 P.2d 373 (Cal. 4th Dist. Ct. App. 1947) (finding that the Civil Service Commission erroneously assumed it had power to adopt a rule authorizing payments did not estop the City from discontinuing such payments. "The fact that said commission has operated for a number of years under the interpretation appellants are contending for here cannot be held to affect the present legal situation, for the reason that the exercise of powers by city officers, in excess of their authority for a great length of time, will raise no presumption of a grant to the city of such powers…".); *People ex rel. Green v. Wood,* 22 How. Pr. 286 (1861). *See also Jack M. Beermann, The Public Pension Crisis,* 70 Wash. & Lee L. Rev. 3 (2013) ("The government should be viewed as having an interest in closing loopholes that allow abusive practices. In general, government has an interest in protecting the integrity and fairness of programs it administers."); *United States v. Borjesson,* 92 F.3d 954, 955-56 (9th Cir. 1996) (recognizing as important the government's interest in maintaining integrity and the appearance of integrity in government programs); *Donovan v. Fitzsimmons,* 778 F.2d 298, 319 (7th Cir. 1985) ("[A]side from protecting the individual beneficiaries of these pension programs, the government in this case clearly has a separate and unique interest in protecting the very integrity, heart and lifeline of the program itself.").

> is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida dealing with a matter of solely state law.

As former General Counsel Fred Franklin stated in 1997, in Legal Advisory Opinion No. 97-1, "[t]he authority of the General Counsel to make binding legal decisions is the mortar that holds the structure of our consolidated government firm." He further opined that there is no Charter authorization allowing an officer or entity of the Consolidated Government to obtain independent legal counsel to challenge the General Counsel's determination.

PERPETUAL DISREGARD OF OFFICE OF GENERAL COUNSEL LEGAL ADVICE

The Board's obstinacy has not just been in regards to the creation of SSVRP, but also the Board's insistence that it has complete authority over its administrative expenses and that, like the SSVRP, the Council has no authority to determine whether the appropriations are reasonable. On three occasions, the Office of General Counsel has issued letters and memoranda explaining that the Board does not have complete autonomy as to all of its financial decisions.[7]

The last memorandum, dated August 28, 2014, advised that not only is the City Charter clear that the City Council, as the legislative body, is the sole governing body vested with the power to appropriate funds to the consolidated government, Florida Statutes and common law support that proposition as well. The memorandum responded to questions raised by the City Council's Finance Committee as to the penalties and consequences that result from the PFPF Board exceeding the appropriated amount for administrative expenses in its annual budget approved by City Council. The Office of General Counsel advised as to the consequences of expenditures exceeding appropriations without obtaining further City Council approval, advising:

> If a PFPF officer or employee exceeds the appropriated amount for administrative expenses in the PFPF's annual budget approved by City Council, he/she may be subject to the following claims: (i) breach of fiduciary duty, (ii) personal liability for the amount of the unauthorized expense under Section 106.334, Ordinance Code, and (iii) criminal charges for a Class D misdemeanor offense under Section 106.336, Ordinance Code.

Section 106.331, *Ordinance Code,* prohibits any officer or employee of an independent agency who receives appropriations from Council to expend such money for any purpose that Council has not

[7] *See Jones v. Bd. of Trustees of Ky. Ret. Sys.*, 910 S.W.2d 710, 714-15 (Ky. 1995) ("While the Board's necessary function is the management of the [Kentucky Employees Retirement System], such does not encompass an unrestricted right to demand funding from the General Assembly . . . . The contract between the Commonwealth and its employees is for retirement funding. It is not a contract which denies the General Assembly the ability to fashion its ways or means in providing the pension funds . . . . It was the duty of the General Assembly to take steps to ensure the continued operation of government without excessive generosity to one governmental entity at the expense of others.").

authorized. Section 106.333, *Ordinance Code,* makes any contract or other indebtedness in violation of this ordinance null and void.

In addition, as recently as October 2015, the Board approved an amendment to the unauthorized SSVRP to provide for an "excess benefit arrangement," because Section 415(b) of the Internal Revenue Code establishes a maximum dollar limitation on annual payments to a beneficiary from a qualified defined benefit pension fund, and John Keane's purported SSVRP pension benefit exceeds the allowable amount. At that meeting, the Office of General Counsel requested that the Board defer any action on the excess benefit arrangement, questioning the Board's authority as to such action in several regards. The Board once again ignored the Office of General Counsel.

PERSONAL LIABILITY

The legal opinions of the General Counsel bind each and every officer of the City and its independent agencies as well as any and all employees. Any person who acts inconsistently with these opinions, particularly any person who expends or authorizes expenditures of any public funds in contravention of these opinions and in dereliction of the City's laws, risks personal liability. Section 22.05(b), City Charter providing protection for PFPF Board members "when relying upon the advice of any attorney employed by the board," does *not* shield the PFPF Board members who rely on the advice of an attorney who disagrees with a binding legal opinion of the General Counsel.[8]

A General Counsel opinion loses both its value and integrity as binding if an independent agency such as the PFPF Board can ignore such advice merely because another attorney disagrees with the General Counsel. Such a reading is anathema to the Charter and in direct contradiction to the very founding documents of the City.

CONCLUSION

In light of the above, it is my opinion that the unauthorized SSVRP pension benefits should be immediately discontinued. While a court could determine the participants are only entitled to a return of their employee contributions, the equities of the situation may warrant providing the plan participants with a prospective pension benefit for their years of service that is equitably equivalent to the amount they would have received had they participated in the City's only existing and legitimately authorized retirement plan (other than the Police and Fire Pension Fund Plan), the General Employees Retirement Plan. Therefore, it is my opinion that in the event that the unauthorized SSVRP pension benefits are discontinued, the plan participants be provided retirement benefits as if they had been participating in the

[8] *See e.g., Chicago Park Dist. v. R.E. Herczel & Co.*, 26 N.E.2d 119 (Ill. 1940) (finding that officers of park district were held to have notice of law covering their duties and would be held liable for unauthorized issuance of checks, notwithstanding advice from attorney for district that such action was legal).

City's General Employees Retirement Plan during the time period that they were participating in the unauthorized SSVRP.

Per your inquiry Mayor, the City, as the ultimate insurer and taxing authority responsible for funding City pension plans, has the power to halt or modify unlawfully funded pension payouts being made by the City. As the chief executive and administrative officer of the consolidated government[9], you have the authority to affect such directive in accordance with all applicable Federal, State and Local Law.

Please do not hesitate to contact me with any other questions or concerns.

Sincerely,

Jason R. Gabriel
General Counsel

CC: Sam E. Mousa, Chief Administrative Officer
Kerri Stewart, Chief of Staff
Mike Weinstein, Director of Finance
Joey Grieve, City Treasurer
Rita Mairs, Chief of Litigation
Loree French, Senior Assistant General Counsel

[9] Article 6, Section 6.04, City Charter.

EXHIBIT B

ORDER

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2018-CA-5925

DIVISION: CV-F

JOHN KEANE,

Plaintiff,

vs.

JACKSONVILLE POLICE AND FIRE PENSION FUND BOARD OF TRUSTEES; and THE CITY OF JACKSONVILLE,

Defendants,

ORDER

THIS CAUSE came before the Court on May 28, 2020 on Plaintiff's Motion for Partial Summary Judgment filed on January 22, 2020, Plaintiff's Motion to Dismiss Amended Counterclaim filed on February 3, 2020, and Defendants' Amended Partial Motion for Summary Judgment filed on April 20, 2020.

The Court having reviewed the motions and responses, heard argument by the Parties, and being otherwise fully advised in the premises finds as follows:

1. Plaintiff's lawsuit arises from the discontinuation of pension benefits promised under his employment contract with the Jacksonville Police and Fire Pension Fund Board of Trustees (the "Board").

2. Plaintiff's employment contract incorporates by reference the Senior Staff Voluntary Retirement Plan ("SSVRP"), a pension plan created by the Board.

3. In September 2015, Plaintiff retired from employment with the Board and began receiving pension benefits under the SSVRP.

4. On May 9, 2016, Plaintiff's benefits under the SSVRP were discontinued and replaced with lower benefit payments calculated as if Plaintiff had enrolled in the City of Jacksonville's General Employees Retirement Plan when he began employment with the Board.

5. Defendants contend Plaintiff is not entitled to the pension benefits provided in his contract because the Board did not have authority to create the SSVRP.

6. By special Act, the Florida Legislature provided: "[t]he board shall have the power to: (5) employ and fix the compensation of an administrator and any consultants, attorneys, actuaries, accountants, and other employees or contractors as the board may require." Laws of Fla. Ch. 90-442; 92-341 *codified at* Jacksonville City Charter Section 22.04(5).

7. Pension benefits are a form of compensation. As such, the power to "fix compensation" necessarily includes the power to provide create benefits for the Board's employees and administer a pension plan for the purpose of providing said benefits.

8. Therefore, the Board had the authority to create the SSVRP. Furthermore, Plaintiff's employment contract—including provisions incorporating the SSVRP—is valid.

9. The Court finds disputed issues of material fact preclude summary judgment on all other issues, including Plaintiff's claims for estoppel and breach of contract.

10. The Court further finds dismissal of Defendants' Amended Counterclaim is improper.

Accordingly, it is **ORDERED and ADJUDGED**:

a. Plaintiff's Motion for Partial Motion for Summary Judgment is **GRANTED** as to the issues of whether the Board had the authority to create the SSVRP and whether Plaintiff's

employment contract was valid. On all other issues Plaintiff's Partial Motion for Summary Judgment is **DENIED.**

b. Defendants' Amended Partial Motion for Summary Judgment is **DENIED.**

c. Plaintiff's Motion to Dismiss Defendants' Amended Counterclaim is **DENIED.**

Plaintiff shall answer the Amended Counterclaim on or before June 8, 2020.

6/4/20

Eric C. Roberson
Circuit Judge

Copies to:

Sheppard, White, Kachergus & DeMaggio, P.A. (sheplaw@sheppardwhite.com)
Loree French (LFrench@coj.net)
Rita Mairs (RMairs@coj.net)

EXHIBIT C

LEGISLATION

Co-Introduced by the Council President at the request of the Jacksonville Police and Fire Pension Board of Trustees and Council Member White:

ORDINANCE 2023-

AN ORDINANCE REGARDING THE JACKSONVILLE POLICE AND FIRE PENSION BOARD OF TRUSTEES; AMENDING SECTION 22.12 OF THE CHARTER OF THE CITY OF JACKSONVILLE; PROVIDING FOR CODIFICATION INSTRUCTIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance 2015-683-E, the City Council of the City of Jacksonville ("City Council") enacted an ordinance which, among other things, prohibited the Jacksonville Police and Fire Pension Board of Trustees (the "Board") from (i) creating any pension or other retirement plan; and (ii) administering any pension or retirement plan other than the Jacksonville Police and Fire Pension Fund (the "2015 Ordinance"); and

WHEREAS, the 2015 Ordinance was based on a binding legal opinion issued by a former General Counsel of the City of Jacksonville ("City"), which stated that the Board did not have the authority to create or administer the Senior Staff Voluntary Retirement Plan (the "SSVRP") (the "First SSVRP Binding Legal Opinion"); and

WHEREAS, after the enactment of the 2015 Ordinance, General Counsel Opinion 16-01 was issued by a former General Counsel on April 20, 2016, which opinion in part also stated that the Board did not have the authority to create or administer the SSVRP (the "Second SSVRP Binding Legal Opinion"). The First SSVRP Binding Legal Opinion and the Second SSVRP Binding Legal Opinion, copies of which are

attached hereto as **Exhibit 1**, shall be collectively referred to herein as the "SSVRP Binding Legal Opinions"; and

WHEREAS, after enactment of the 2015 Ordinance, litigation ensued between SSVRP participants, as the plaintiffs, and the City and the Board, as co-defendants; and

WHEREAS, on June 6, 2020, an order was issued in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida (Case No. 2018-CA-5925) partially granting the plaintiffs Motion for Summary Judgment and holding that the Board, pursuant to Section 22.04(e) of the City Charter, had the authority to fix the compensation of its employees, which compensation included the creation of the SSVRP as an employee benefit (the "Order"); and

WHEREAS, a copy of the Order is attached hereto as **Exhibit 2**; **WHEREAS**, the current General Counsel has reviewed the Order and determined that the SSVRP Binding Legal Opinions were overruled by the Order pursuant to Section 7.01 of the City Charter regarding those aspects of the opinions holding that the Board did not have the authority to create or administer the SSVRP; and

WHEREAS, the current General Counsel concurs with the Board that Section 22.12 of the City Charter should be amended to be consistent with the Order by removing Subsections 22.12(a) and (b) of the City Charter; and

WHEREAS, considering the forgoing, the City Council desires to amend Section 22.12 of the City Charter to be consistent with the Order and the Board's authority in Section 22.04(e) of the City Charter; and

WHEREAS, a copy of the Board resolution is contained **On File** with Legislative Services Division; now therefore,

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Recitals. The recitals above are incorporated herein by this reference.

Section 2. Amending Section 22.12 of the Charter of the City of Jacksonville (Retirement for Employees of Police and Fire Pension Board of Trustees). Section 22.12 of the Charter of the City of Jacksonville is hereby amended to read as follows:

CHARTER LAWS CHARTER OF THE CITY OF JACKSONVILLE, FLORIDA

* * *

ARTICLE 22. - JACKSONVILLE POLICE AND FIRE PENSION BOARD OF TRUSTEES

* * *

Sec. 22.12. Retirement for board employees.

~~(a) The board is hereby prohibited from creating any pension or other retirement plan, and the board is hereby prohibited from administering any pension or retirement plan other than the Jacksonville Police and Fire Pension Fund.~~

~~(b) The board is hereby prohibited from offering to any of its employees any retirement plan other than the General Employees Pension Plan or the General Employees Defined Contribution Plan.~~

~~(c)~~ The employees of the board are authorized to join the General Employees Pension Plan or the General Employees Defined Contribution Plan.

Section 3. Codification Instructions. The Codifier and the Office of General Counsel are authorized to make all chapter and division "tables of contents" consistent with the changes set forth herein. Such editorial changes and any others necessary to make the *Ordinance Code* consistent with the intent of this legislation are approved and directed herein, and changes to the *Ordinance Code* shall be made forthwith and when inconsistencies are discovered.

Section 4. Effective Date. This Ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

_____

Office of General Counsel

Legislation Prepared by: Lawsikia J. Hodges

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_Amendment_to_Section_22_12_City_Charter.docx