

CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM

BOARD OF TRUSTEES SPECIAL MEETING

A special meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on Thursday, March 3, 2005, at 2:00 p.m. in the Committee-of-the-Whole Room, 3rd Floor, City Hall Council Chambers, with the following in attendance:

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Douglas Bingaman, Peter Dobrzeniecki, Robert Erlenbeck, Janice Kehoe, Amy Lindman, Alvern Lock, Donald Phillips, Robert Rosenberger, Georgia Steinhoff, Edward Taylor, Cass Wisniewski

ABSENT Daniel Coffield, Peggy Cook, Mark Horrigan, Sandra Kidd,

ALSO PRESENT Habib Ghattas, Attorney for the Retirement Board
Steven Spender, Special Counsel
Wanda Twitty, Retirement Supervisor

1. CHAIRPERSON CALLS THE MEETING TO ORDER

Chairman Daniel Hall called the meeting to order at 2:07 p.m. He stated that the Special Board Meeting was called for the purpose of giving the Board's legal counsel an opportunity to update the Board regarding the Court of Appeals decision on the case involving the Retirement Board's right to hire independent counsel and deciding whether any further action should be taken.

2. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

There were no members of the public present who wished to address the Board.

3. COURT OF APPEALS DECISION ON THE RETIREMENT BOARD'S RIGHT TO HIRE INDEPENDENT COUNSEL

The Board's Attorney Habib Ghattas and Special Counsel Steven Spender reviewed the history of the lawsuit *Board of Trustees of the Flint Employees' Retirement System vs. the City of Flint* and the recent Court of Appeals decision. Attorney Ghattas noted that the issue at stake is whether or not the Board of Trustees, as Trustees of the assets of a public pension fund, has the authority to independently retain its own attorney. The

Court of Appeals affirmed Judge Yuille’s opinion by determining that the Board can hire its own attorney only “when necessary for the conduct of the affairs of the Retirement System.” The Court of Appeals also stated that the determination of when the Board of Trustees could hire legal counsel was to be decided by the Board on a case-by-case basis. Board Legal Counsel has argued that the Ordinance is in conflict with Public Act 314 and is thus pre-empted, enabling the Board to hire its own counsel, subject to the restrictions of Public Act 314. It is unclear, as a practical matter, how to apply the finding that there has to be a “conflict of interest” as referenced by Judge Yuille and the Court of Appeals, as this language is not referenced in P.A. 314.

Attorney Spender also noted that two Amicus briefs were filed, one by the Policemen and Firemen and one by MAPERS, which exhaustively supported FERS position, as this decision will affect all retirement boards throughout the State of Michigan.

Attorneys Spender and Ghattas recommended filing an Application for Leave to Appeal to the Michigan Supreme Court. If the application is granted, an appeal to the Supreme Court could proceed. Attorney Ghattas noted that, if no appeal is made, the Board could find itself in the position of repeated disagreements with the City over the interpretation of this ruling, which could result in ongoing litigation. The goal of appealing to the Supreme Court would be to bring closure to this issue.

Discussion followed. Attorney Spender stated that the Application for Leave to Appeal must be filed within 42 days of the date the decision is reached by the Court of Appeals. Once the application is filed, the Supreme Court is supposed to rule within 21 days whether they will allow an appeal to be filed (the decision could take longer). If the Leave to Appeal is granted, briefs must be filed and a decision would likely take a year or more. Attorney Spender stated that he believed that Judge Yuille’s order was to maintain the status quo until the appellate process was completed.

Motion made by Edward Taylor, supported by Georgia Steinhoff, to authorize Legal Counsel for the Board of Trustees to take all necessary steps to file an Application for Leave to File an Appeal with the Michigan State Supreme Court in the case of the *Board of Trustees of the Flint Employees’ Retirement System vs. the City of Flint*.

Upon being put to a roll call vote, the motion carried by a vote of 5 to 4:

Roll Call:	Cass Wisniewski – no	Robert Erlenbeck – no
	Peter Dobrzeniecki – no	Janice Kehoe – yes
	Alvern Lock – yes	Robert Rosenberger – no
	Georgia Steinhoff – yes	Edward Taylor – yes
	Daniel Hall – yes	

4. OTHER BOARD BUSINESS

- Appointment of Douglas Bingaman

Chairman Daniel Hall noted that a memo was received from Peter Dobrzeniecki, Director of Finance & Secretary/Fund Administrator of the System, dated March 1, 2005, appointing Douglas Bingaman, Deputy City Treasurer, as Peter's alternate to the City of Flint Employees Retirement System Board of Trustees. He welcomed Mr. Bingaman to the Board.

Attorney Habeeb Ghattas noted that there had been some confusion regarding the appointment of an alternate for Peter D. It has been past practice, which was supported by Ordinance language that is missing from the current draft of the ordinance (apparently by clerical error), that the Finance Director, and other Trustees serving by virtue of their position, may appoint their own alternates. Currently there is no language in the Ordinance addressing the appointment of alternates for these positions. He stated that this is another example of Ordinance language issues that need to be addressed.

- March 1, 2005 Pension Payroll Transfer

Chairman Daniel Hall explained that, due to a lack of authorized signatories approved by the City, the two fund transfers approved at the February 22nd meeting did not take place. Neither Peter Dobrzeniecki nor Jim Goodin were in town to sign for the transfers and the City Attorney/Administration would not allow any transfers to be done without their signatures. Instead, the City loaned the Retirement System the necessary funds to cover the March 1st pension payroll.

Attorney Habeeb Ghattas stated that the resolutions for the transfers were approved at the last meeting. However, Northern Trust would not honor the resolution because of the threat of litigation from the EFM and the City Attorney in correspondence to them which cited Section 35-13(c) of the City Code:

“The City Treasurer shall be the Treasurer of the Retirement System and the Custodian of its funds. All payments from the funds of the system shall be made by the Treasurer, countersigned by the Director of Finance, only upon specific or continuing resolution adopted by the Board of Trustees authorizing such payment or payments.”

Attorney Ghattas noted that, although the Judge essentially ruled in favor of the Board as to the alleged authority of the Emergency Financial Manager, Judge Yuille did not specifically address this question. One of the arguments raised by the Board's legal counsel was that the Ordinance was pre-empted by State law and the Board could set its own policy. The Judge continued, however, with his determination that Public Act 314 did not pre-empt the Ordinance. The policy of the Board was that any two of three (Chair, Vice Chair, Secretary) could sign for funds to be transferred. However, based on the threat of litigation, Northern Trust refused to process any disbursement or transfer without the signatures of the Finance Director and Treasurer. Since neither the Finance Director nor the City Treasurer was available to authorize the transfers, there was a concern that a transfer had to be made or the pension checks would not be covered. A recommendation was made that State Street, also holding assets of the system, could process a transfer to the appropriate account of sufficient amount to cover the pension payroll. Prior to that being accomplished, however, the City Attorney sent a letter to State Street, similar to the previous letter to Northern Trust, reiterating the City's position regarding the Ordinance. Under that threat of litigation, State Street apparently determined that they could not make any transfers without the signature of the Finance Director and City Treasurer. Since neither State Street nor Northern Trust would recognize any direction without those signatures, the City loaned the funds to the pension payroll account to meet the March 1st pension payroll with the understanding that the transfers would be made at a later date.

Peter Dobrzeniecki provided documentation that \$3,570,094.62 was loaned by the City to the pension system. Chairman Hall directed that a letter be drafted after the Board Meeting, for his signature, authorizing the funds to be paid back to the City from the Pension Payroll Account, once the original transfers approved at the February 22nd Board Meeting are completed. Chairman Daniel Hall noted that all signatories are signing the letters today to execute the transfers that were approved at the February 22nd meeting.

Discussion followed regarding the need for additional signatories.

A motion was made by Georgia Steinhoff, and supported by Robert Rosenberger, to revise the Board of Trustees' policy on signatures as follows:

The following persons are authorized to sign any individual document on behalf of the Board of Trustees in the following manner: 1) One signature of either the Chair OR the Vice Chair. 2) One signature to be one of the following: Secretary/Fund Administrator/Finance Director OR City Treasurer OR Deputy City Treasurer OR Deputy Finance Director-Audit OR Deputy Finance Director-Accounting. This signature authority applies to any documents obligating the Retirement System in any way or giving any direction regarding funds or actions on behalf of the Flint Employees' Retirement System.

Upon being put to a vote, the motion carried unanimously.

- 13th Check Issues

Chairman Daniel Hall stated that the 13th Check Committee would be meeting next week and discussing the methodology with Larry Langer. Committee Members are Georgia Steinhoff, Chair, Donald Phillips, Sandra Kidd, and Ed Taylor. Mr. Langer has agreed to attend the March 22nd Board Meeting also.

5. ADJOURNMENT

There being no further business to discuss, it was moved by Georgia Steinhoff, and supported by Ed Taylor, to adjourn the meeting at 3:33 p.m.

Upon being put to a vote, the motion carried unanimously.

Respectfully submitted,

Peter Dobrzeniecki
Secretary/Fund Administrator