

KNOX COUNTY RETIREMENT AND PENSION BOARD

OCTOBER 23, 2017

The Knox County Retirement and Pension Board met in regular session on Monday, October 23, 2017, at 1:30 P.M. in the County Commission Conference Room 640, City-County Building, Knoxville, Tennessee.

The following members were present: Mr. Chris Caldwell, Proxy for Mayor Burchett, Chairman, Commissioner Hugh Nystrom, Vice Chairman, Ms. Tracy Foster, Secretary, Commissioner John Schoonmaker, Commissioner Bob Thomas, Ms. Jennifer Hemmelgarn, Mr. Garrett Raiden and Mr. Zack Webb. Commissioner Brantley was absent from the meeting.

Also present at the meeting were:

USI Consulting Group: Mr. Bob Cross, Ms. Carissa Dunaway

Legal Counsel: Mr. John Owings, Ms. Stephanie Coleman, Mr. Bill Mason, Ms. Ashley Trotto, Mr. Charles Burks

Law Director's Office: Mr. David Wigler

Nationwide: Mr. Wayne Sellers

Attorney Jonathan Reed

Retirement Staff: Ms. Kim Bennett, Ms. Jennifer Schroeder, Ms. Terri Chase, Ms. Savannah Russell, Ms. Mitzi Stooksbury, Mr. Zack Cole

Court Reporter: Ms. Dana Holloway

FOP: Mr. Mark Taylor, Mr. Stan McCroskey

Sheriff's Office: Ms. Lynn Hall, Mr. Clyde Cowan, Mr. Tim Laycock, Mr. David Radoesky, Ms. Erin Baxter, Ms. Lisa Jarrell, Ms. Nancy Hamilton, Ms. Krystal Gibson

Former Board Member: Mr. Rick Trott

Retiree: Mr. Thomas Spangler

IN RE: CALL TO ORDER

Chairman Caldwell presided and called the meeting to order. Mr. Caldwell recognized Ms. Dana Holloway, court reporter. Mr. Caldwell stated that if you request to speak during the meeting to have a seat at the table and identify yourself for the record.

IN RE: AMENDMENTS TO AGENDA

Ms. Bennett provided an amended agenda to add two additional retirements for approval.

IN RE: APPROVAL OF MINUTES OF SEPTEMBER 25, 2017

Secretary Foster presented the minutes of the prior meeting of September 25, 2017. Commissioner Thomas made a motion to approve the minutes as presented. The motion was seconded by Commissioner Nystrom and unanimously approved.

IN RE: DOCUMENT COMMITTEE REPORT

Chairman Caldwell recognized Commissioner Nystrom to give the report of the Document Committee meeting on Tuesday, October 3, 2017. Commissioner Nystrom stated that the Committee met at the request of the Chairman of the Pension Board to discuss changes to the governing UOPP document proposed by Mr. Keith Burroughs, Legal Counsel for the Knox County Law Directors Office. Commissioner Nystrom reported that the Committee listened to all parties present and that detailed information was shared during the session. After the discussion, the Document Committee had no recommendation for the Board.

IN RE: APPLICATION FOR RETIREMENT – DEFINED BENEFIT PLAN, LUMP SUM DISTRIBUTION, AND AUTHORIZATION OF CREDITED SERVICE BENEFIT BASED ON COMPLETED YEARS OF SERVICE

The following applications for retirement along with the lump sum benefit and the credited service benefit based upon completed years of credited service at the date of retirement, as provided in the Defined Benefit Plan, were presented for consideration:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>CREDITED SERVICE</u>	<u>EFFECTIVE DATE</u>
Gaye Biehl	Schools	9 years 1 month	September 1, 2017
Sharon Coffman	Schools	6 years	November 1, 2017

After review, a motion was made by Commissioner Nystrom to approve the application for retirement under the Defined Benefit Plan as presented and authorize the Trustee, State Street Bank, to make disposition of the benefits. The motion was seconded by Ms. Hemmelgarn and unanimously approved.

IN RE: APPLICATION FOR RETIREMENT - UNIFORMED OFFICERS PENSION PLAN

The following applications for retirement as provided in the Uniformed Officers Pension Plan, were presented for consideration:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>CREDITED SERVICE</u>	<u>EFFECTIVE DATE</u>
James Pritchard	Sheriff	34 years 3 months	November 1, 2017
Renee Ricker, Beneficiary of Dennis Ricker	Sheriff	16 years 4 months	November 1, 2017

A motion was made by Mr. Webb to approve the application for retirement under the Uniformed Officers Pension Plan as presented and authorize the Trustee, State Street Bank, to make disposition of the benefits. The motion was seconded by Ms. Hemmelgarn. Mr. Jonathan Reed, attorney representing the Knox County Law Directors Office, asked Chairman Caldwell if he could address the Board. Chairman Caldwell recognized Mr. Reed. Mr. Reed asked if Ms. Bennett and the Board Members if they had received a copy of the Motion to Intervene, which is attached. Ms. Bennett stated that the Board Members had received a copy of the Motion. Mr. Reed stated that his client's objection involves issues raised regarding the interpretation of the original 2007 UOPP and how accrued vacation leave is used in computation of a UOPP retirement benefit. He stated it is the position of the Law Director's office is that at this time it would be improper to approve the requested Retirements in item 6 on the agenda. Chairman Caldwell then recognized Mr. Stan McCroskey who stated that Mr. Reed was trying to improperly delay people from

retiring. Mr. Reed and Mr. McCroskey each made statements in support of their respective positions. Chairman Caldwell asked for any other discussion before the vote. The motion voted and unanimously approved, 8 to 0.

IN RE: APPLICATIONS FOR RETIREMENT AS PROVIDED IN THE ASSET ACCUMULATION PLAN AND AUTHORIZATION OF CREDITED SERVICE BENEFIT BASED ON COMPLETED YEARS OF SERVICE

The following applications for retirement and the credited service benefit based upon completed years of credited service at the date of retirement, as provided in the Asset Accumulation Plan, were presented for consideration:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>CREDITED SERVICE</u>	<u>EFFECTIVE DATE</u>
Teresa Lovett	Crim. Court	12 years 7 months	November 1, 2017
Hosea Skinner	Trustee	16 years 1 months	July 1, 2017
John Thompson	Trustee	6 years 10 months	November 1, 2017
Dale Workman	Law Director	17 years 9 months	November 1, 2017
Sharon Coffman	Schools	18 years 1 month	November 1, 2017

A motion was made by Commissioner Nystrom to approve the applications for retirement under the Asset Accumulation Plan as presented and to authorize the Directed Custodian, Wells Fargo Bank, to make disposition of the benefits upon certification from USI and to authorize Trustee, State Street Bank, to make payment of the credited service benefit. The motion was seconded by Ms. Hemmelgarn and unanimously approved.

IN RE: REPORT OF EXECUTIVE DIRECTOR

Ms. Bennett introduced Mr. Zack Cole as the Defined Contribution/Defined Benefit Administrator who started in the Retirement Office on October 2, 2017.

Ms. Bennett stated that a Disability Committee Meeting would be scheduled before the next Board Meeting in November to discuss the rates received from Reed Group. Ms. Bennett reported that communication regarding open enrollment for retirees' Medical and Dental Insurance had been mailed, that Pugh and Company are in the Retirement Office conducting the annual audit, and that the Life Insurance transition had taken place.

IN RE: RFQ REPORT

Ms. Bennett stated the RFQ committee met last Tuesday and a decision was made to interview the top two candidates and that Mr. Matt Myers will be scheduling meetings.

IN RE: REPORT OF INVESTMENT COMMITTEE

Chairman Caldwell presented the rates of return for the Defined Contribution Plans as of September 30, 2017, from USI that were distributed to the Board Members and reported that the next quarterly investment committee meeting is scheduled for Tuesday, November 14, 2017 at 1:30pm.

IN RE: PUBLIC HEARING AND SECOND READING OF AMENDMENT AND RESTATEMENT OF THE KNOX COUNTY EMPLOYEE BENEFIT SYSTEM

After Mr. Mason's overview of the restatement, a motion to approve on second reading of amendment and restatement of the Knox County Employee Benefit System was made by Commissioner Nystrom. The motion was seconded by Mr. Webb. During discussion, Mr. Webb thanked USI Consulting Group and Mr. Cross for their efforts in assuring all the funds from the Asset Plan were available for the MERP Participant investment direction in January. Chairman Caldwell asked if there were comments from the public. There being none, the motion was approved unanimously.

IN RE: PUBLIC HEARING AND SECOND READING OF AMENDMENT AND RESTATEMENT OF THE KNOX COUNTY UNIFORMED OFFICERS PENSION PLAN

After Mr. Mason summarized the amendment related to life insurance administration, a motion to approve on second reading the amendment and restatement of the Knox County Uniformed Officers Plan was made by Commissioner Nystrom. The motion was seconded by Commissioner Mr. Webb. Chairman Caldwell asked if there were comments from the public. There being none, the motion was approved unanimously.

IN RE: PUBLIC HEARING AND SECOND READING OF AMENDMENT AND RESTATEMENT OF THE KNOX COUNTY SHERIFF'S TOTAL ACCUMULATION RETIREMENT PLAN

After Mr. Mason summarized the amendment related to life insurance administration, a motion to approve on second reading the amendment and restatement of the Knox County Sheriff's Total Accumulation Retirement Plan was made by Ms. Foster. The motion was seconded by Commissioner Nystrom. Chairman Caldwell asked if there were comments from the public. There being none, the motion was approved unanimously.

IN RE: REPORT OF LEGAL COUNSEL

Mr. Owings and Mr Mason had no report. Mr. Burks stated that the location for the Gass Hearing is scheduled in the Small Assembly Room on Tuesday, December 5th, 2017 at 10am.

IN RE: REPORT OF ACTUARY

Mr. Cross stated that there was recent discussion from House Republican leaders with proposed tax bill changes for business and individual tax rates possibly impacting 401(k), 457, and 403(b) plans. President Trump tweeted 401(k)'s would not be impacted. Mr. Cross stated that he wasn't sure if the discussion was over as the tweet just came out today but it appears no changes will be made to 401(k) plans.

IN RE: STATEMENT OF ACCOUNTS AS AUDITED AND RECOMMENDED FOR PAYMENT BY KIM BENNETT, EXECUTIVE DIRECTOR

The following statement of accounts for professional services was presented for consideration and approval of payment, in accordance with agreements and audited and recommended for payment by Ms. Bennett:

Invoices for October 2017	Fiscal YTD Approved Invoices 09/30/2017	Sept Invoice For Approval	Fiscal YTD Approved Invoices 10/31/2017
BENXL Invoice #		\$0.00	
TOTAL BENXL	\$25,800.00	\$0.00	\$25,800.00
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #		\$0.00	
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #		\$0.00	
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #		\$0.00	
***TOTAL KENNERLY, MONTGOMERY & FINLEY, P.C.	\$500.00	\$0.00	\$500.00
ROBERTSON, OVERBEY Invoice # 061417-9897M		\$0.00	
*** TOTAL ROBERTSON, OVERBEY	\$0.00	\$0.00	\$0.00
USI CONSULTING GROUP Invoice # 1000298		\$24,124.50	
USI CONSULTING GROUP Invoice #		\$0.00	
TOTAL USI CONSULTING GROUP	\$121,210.68	\$24,124.50	\$145,335.18
Invoices for October 2017	\$147,510.68	\$24,124.50	\$171,635.18
*** Retainer not included in approved billings for the Board			Fiscal YTD
Robertson, Overbey Retainer	\$4,000 per month		\$16,000
Kennerly Montgomery Retainer	\$12,000 per month		\$48,000
Court Reporter			\$1,170
Fees Received from QDRO Participants	\$500 (DC Fee) \$2,000 (DB Fee)		\$500 \$0

After review of the statement of accounts and invoices, a motion was made by Commissioner Thomas that the Board authorize the payment indicated above to be paid from the designated Retirement Plans. The motion was seconded by Ms. Hemmelgarn and unanimously approved.

ADJOURNMENT

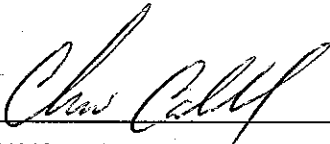
Because of the large number of interested parties attending the meeting today, Chairman Caldwell clarified that the Board did not make any changes to the UOPP Plan Document today (other than the amendment on life insurance), and that the report of the Document Committee was presented with no change recommended. Chairman Caldwell asked the Board for any comments and no response was given by any of the Board members present.

Chairman Caldwell allowed public comment. Mr. Mark Taylor, President of the FOP, thanked the Board for approving the retirements in agenda item 6. Mr. Wayne Sellers from Nationwide stated that the 457 deferral limits for 2018 increased by \$500 from \$18,000 in 2017 to \$18,500 in 2018.

Mr. Reed asked the Board to include within the minutes all documents submitted to the Board concerning the approval of agenda item 6.

Mr. Owings stated that Mr. Reed requested all documents relating to the calculation and approval of agenda item 6, be included in the minutes, individual retirement records are confidential per law. As such, only the documents presented to the Board for approval at today's meeting would be included. Mr. Reed agreed.

As there was no further business to come before the Board, the meeting was adjourned in order.



MAYOR TIM BURCHETT, CHAIRMAN
BY PROXY, CHRIS CALDWELL



MS. TRACY FOSTER, SECRETARY

EGERTON McAFEE

Egerton McAfee Armistead & Davis, P.C.

ATTORNEYS AT LAW

CLIENT DRIVEN SINCE 1982

Joe Mont McAfee
Lewis C. Foster, Jr.
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Wm. E. McClamroch, III
Rockforde D. King
Jonathan D. Reed
Ronald T. Hill
Keith H. Burroughs
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Cheryl G. Rice
James M. Cornelius, Jr.
R. Christopher Trump

Nicholas J. Chase
P. Newman Bankston
John L. Wood
Melissa B. Carrasco
Bradley C. Sagraves
William H. Kittrell
Tracy G. Edmundson
Allison S. Jackson
Heather G. Ferguson
Jeremy D. Miller
Rameen J. Nasrollahi
Samuel C. Louderback

October 23, 2017

VIA HAND DELIVERY

Kim Bennett, Executive Director
Knox County Retirement and Pension Board
City-County Building Room 371
400 Main Street
Knoxville, TN 37902

**RE: Knox County's Motion to Intervene and Objections to Item 6 of the
Agenda for the Board's October 23, 2017 Meeting**

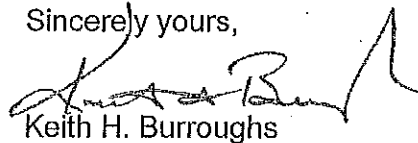
Dear Ms. Bennett:

Please find enclosed our captioned Motion on behalf of Knox County. We ask that this Motion be addressed by the Board before making any determinations regarding Item 6 on today's agenda.

If you have any questions, please feel free to contact me.

With kind regards.

Sincerely yours,



Keith H. Burroughs

KHB/ajm

Enclosure: As stated above

Cc: Richard B. Armstrong, Jr., Esq.
John E. Owings, Esq.
Jonathan D. Reed, Esq.
Knox County Retirement and Pension Board

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**KNOX COUNTY'S MOTION TO INTERVENE AND
OBJECTIONS TO ITEM 6 OF THE AGENDA
FOR THE BOARD'S OCTOBER 23, 2017 MEETING**

Comes now Knox County, Tennessee, by and through the undersigned counsel, and moves to intervene and objects to the Board's approval of the applications for retirement benefits on Item 6 of the Agenda for the Board's October 23, 2017 meeting. Knox County objects to this item only to the extent that any accrued leave cashout was or will be used in calculating the pension benefits to be awarded to these Participants in the UOPP.

Knox County moves to include by reference as part of the record on this matter: this Motion with attachments; the administrative record in the *Gass* case; the Board's minutes from 2007 through the present; any and all amendments to the UOPP; records identifying leave cashout included or to be included in pension calculations for all retirees including the retirees on the agenda for the October 23, 2017 meeting; and any additional items that may be deemed relevant by the Board's General Counsel.

MEMORANDUM IN SUPPORT OF MOTION

Disqualification of Counsel

As a preliminary matter, Knox County objects to the participation in these proceedings by Mr. Owings, Mr. Mason and their law firms. Mr. Owings withdrew from representing the Board in the *Gass* case due to a conflict of interest in that his son is a participant in the UOPP and stands to benefit directly from the position advanced by Mr. Owings and Mr. Mason. If Mr. Owings had a conflict in that limited case involving one Participant, he and his firm have a conflict in advising the Board on the broader issue of whether to include leave cashout in calculation of pension benefits.

Mr. Mason has a conflict because the unlawful practice of including leave cashout in the calculation of pension benefits began on his watch, while he was advising the Board. Thus, he has a personal interest in justifying the continuation of this unlawful practice. With the advice and counsel of Defendant Mason, the staff of the Pension Board has been violating Section 1.10 of the UOPP, Knox County Ordinance No. O-06-4-101 and the November 7, 2006 Charter Amendment by including leave cashout in calculating pension benefits.

In a July 29, 2016 Memo to Sheriff Jones (Exhibit 6 in the Gass record), Director Bennett states that she reviewed the Sheriff's General Order with counsel for the Board (presumably Mr. Mason), "to determine the treatment of vacation pay cash-out...." She then announced a policy change for retirees on or before January 1, 2017, who would receive more UVCO than the General Order permitted, and another for persons retiring after January 1, 2017, who would not. These policy changes created a terrible precedent and exposed the Board to arguments that its interpretation of the Plan was arbitrary and capricious. These policy changes further exposed Knox County to additional financial obligations without consideration and approval by Knox County.

According to Section 2.04 of the UOPP, the Board is the Administrator of the UOPP with the discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan, including all questions relating to the amount of any benefit to which any participant may become entitled. Upon information and belief, the Board has never exercised its exclusive authority to interpret the relevant provisions of the UOPP. The July 29, 2016

Memo to Sheriff Jones announcing a change in construction of the UOPP was completely beyond Director Bennett's authority.

In addition, Director Bennett's July 29, 2016 Memo also announced a policy change and interpretation of the UOPP that directly increased the funding or financial obligations of the County. Yet that action was never submitted to the Commission for its express consent and funding by resolution as required by Section 7.04E of the Charter. The Pension Board has a duty to obtain Knox County's consent and funding by resolution before taking any action that would increase the funding or financial obligations of the County. Section 7.04E of the Knox County Charter specifically provides:

The Knox County Retirement and Pension Board shall not have the power or authority to adopt or approve any plan or plan amendment, or take any other action, which thereby would increase the funding or financial obligations of the County either at the time of the action or in the future without notification to and express consent and funding by resolution from the commission.

Mr. Mason has never advised the Pension Board that actions taken based upon his recommendations and advice have increased and will increase the funding or financial obligations of the County, and have violated and will continue to violate Section 7.04E of the Knox County Charter unless they are taken with the express consent and funding by resolution of the Knox County Commission.

Mr. Owings and Mr. Mason have never disclosed their personal interests in preserving unlawful terminology in the UOPP and an unlawful interpretation of the UOPP that includes leave cashout in the calculation of Average Monthly Compensation

and therefore have not obtained informed consent of the Pension Board to continue its representation.

In addition, it is Knox County's position that where a concurrent conflict of interest is created by the type of personal interests of the lawyer like those at issue here, the conflict cannot be waived even by informed consent.

Analysis

Knox County's understanding of the history of this unlawful practice continues to grow. On October 18, 2017, Director Bennett produced to Knox County a copy of the original 2007 UOPP. Attached is a copy of this document as Exhibit A, along with the resolution approving it. Leave cashout is not included and Compensation is defined as "salary."

Also attached as Exhibit B is the 2012 Charter Amendment Mr. Mason referred to at the October 3 meeting of the Document Committee. Mr. Mason advised the Board that this Amendment "ratified" the UOPP. This advice was misleading because the Charter Amendment says "The 2007 Officers Plan shall remain in effect for any officers who participated in it prior to January 1, 2014 so long as such officer remains continuously employed as an officer." As noted, leave cashout is not included in the 2007 UOPP and Compensation is defined as "salary."

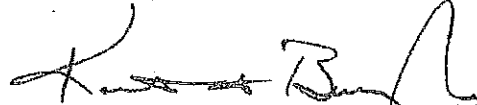
Also attached as Exhibit C is Section 7.05 of the current Knox County Charter. Subsection B states: "The 2007 Officers Plan shall remain in effect for any officers who participated in it prior to January 1, 2014 so long as such officer remains continuously employed as an officer." Thus, leave cashout has never been permitted for inclusion in the calculation of pension benefits by the Knox County Charter.

Knox County has asked for copies of all the amendments to the UOPP, and at the time this motion was drafted Director Bennett had not produced them. What is clear, however, is that the phrase "leave cashout" was not in the Plan that was adopted by the voters at the inception of the UOPP and as of the last amendment of the Charter in 2012.

Section 1.10 of the 2016 Restated UOPP provides that post-severance compensation shall not be "recognized" in determining a participant's "Average Monthly Compensation." This provision is consistent with the Charter and must be given effect. Leave cashout cannot be included in the calculation of these retirees' pension benefits. If the calculations for the retirements on the October 23, 2017 Board Agenda, Item 6, include any accrued leave cashout in their pension calculations, they are *ultra vires* and unlawful, and Knox County objects.

Respectfully submitted this 23rd day of October, 2017.

EGERTON, MCAFEE, ARMISTEAD & DAVIS, P. C.



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