

RICHARD B. ARMSTRONG, JR.

KNOX COUNTY LAW DIRECTOR

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Chief Deputy Law Director

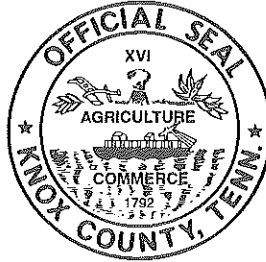
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MEMORANDUM

TO: KNOX COUNTY COMMISSIONERS

FROM: RICHARD B. ARMSTRONG, JR. 
KNOX COUNTY LAW DIRECTOR

DATE: MARCH 19, 2018

RE: OUTSIDE COUNSEL FOR KNOX COUNTY RETIREES

In order to answer questions you may have concerning the proposed resolution to outside counsel for Knox County retirees, I first need to inform you of a critical funding issue of the Pension and Retirement Board. In 2007, the Knox County taxpayers approved a retirement program for retired Knox County Sheriff uniformed officers. The program was modeled after that of the City of Knoxville Police department and the United States military in which a 30 year veteran receives 75 percent of their monthly salary for life. The rest of Knox County and City of Knoxville employees do not receive this same benefit.

For reasons unknown, the Pension Office Staff, upon advice of its highly paid outside counsel, calculated benefits between 85 percent and 95 percent of monthly salary. These calculations are contrary to that which the taxpayers had approved. This increased the actuarial liability and potential tax burden to the taxpayers of Knox County for approximately 600 uniformed officers. These increases have never been submitted to Commission as required by the plan.

The Law Director did not become aware of this improper payout until a lawsuit was filed against the Pension Board by a Sheriff's Office retiree who had been awarded by the Board approximately 89.6 percent of his monthly salary retirement check, but who wanted 98 percent of his monthly salary as a benefit. His argument was that the higher calculation had been used by the Board in the past.

The Law Director assumed defense of that lawsuit and immediately became aware that the Pension Board had been routinely awarding additional retirement income over and above the taxpayer-approved calculation based upon the officers' average monthly salary.

The Law Director brought this to the Board's attention. However, the Board's outside counsel continued to advise that, regardless of the Charter provision as approved by vote of the Knox County taxpayers, the Board should continue to award retirement benefits in the range of 10 percent to 20 percent above that set forth in the Charter.

The actuary for the County's Pension Board noted that the original calculations for the funding were based upon the 75 percent calculation and that he had not been aware of the increased benefits awarded to the retirees. He stated that since he now knew of the increase, he now recommended the taxpayers fund an immediate additional \$400,000 to make up some of the actuarially funded shortfall.

In defense of past Pension Boards, they were not made aware of the actual funding calculations. They were simply given a list of names to approve without the benefit of numbers attached with a recommendation from staff and outside counsel.

After this was made known, the Mayor and several Board members desired to let the courts handle the issue rather than correct the problem themselves. The Law Director has complied with that request by bringing an action against the Pension Board just as the City of Knoxville was required to do against its Pension Board to provide guidance and resolution to the formula issue.

The Law Director has an absolute duty to the taxpayers of Knox County to defend the Charter of Knox County. If the Pension Board and its outside attorneys were not willing to correct this blatant error, then the Law Director had no option but to file a court action asking the Court to determine whether the Pension Board's actions violated the Knox County Charter.

This type of lawsuit requires that affected parties be joined in. Since the recent retirees were given an amount in excess of that to which they were entitled, they are required to be named in the lawsuit. No matter what the outcome of the lawsuit, the retirees are now receiving and will continue to receive their entitled retirement benefit for life.

The Board's interest is being represented by another outside attorney who is advocating the additional amount of benefits over and above the amount authorized by the charter. The retirees' interest is the same and is being represented by the Board's counsel. To hire additional counsel to represent this interest would be redundant.

If this outside attorney prevails in this lawsuit, the named retirees will collect the excess benefit. If the Law Director prevails on the interpretation of the charter, the retirees will continue to receive, unabated, the amount provided in the charter – 75 percent of monthly salary for a 30 year retiree and 50 percent for a 20 year retiree.

It is unfortunate that the majority of the Pension Board has placed these retirees in this position. However, it is the Mayor and the majority of the Board who desired to have a court resolve the issue.

All of these issues could still be resolved by the Mayor and a majority vote of the Pension Board if they were to vote to adopt the calculation formula as approved by the Knox County taxpayers in the Charter. If this action were taken, the associated cases could be dismissed.

As to the resolution to hire an attorney for the retirees, neither the Sheriff nor the Mayor are given the power to request such action by the Charter of Knox County. This action is the duty and power of the Knox County Law Director, at his discretion, in accordance with the mandate of the Knox County Charter (Section 3.08 D): "It shall be the duty of the Law Director ...to hire outside counsel for the fulfillment of his/her duties"

In addition, Section 2-286 addresses the hiring of an attorney for Knox County employees as follows: "(b) Authority to furnish counsel. The county department of law is authorized to furnish defense counsel to any employee "sued for damages" for an act or omission arising out of the performance of his employment with the county...." To the extent that the resolution states otherwise is a false statement.

Finally, there is no authority for Knox County to hire outside counsel for private citizens of Knox County. The action of former employees must have been in the performance of their duties while employed by Knox County to be considered for outside counsel after leaving the employment of Knox County.

RBA:kfc