

**MINUTES OF THE SPECIAL MEETING AND EXECUTIVE SESSION  
OF THE BOARD OF TRUSTEES  
OF THE  
TAMPA FIREFIGHTERS & POLICE OFFICERS PENSION BOARD  
3001 North Boulevard  
Tampa, FL 33603 (813) 274-8550  
Wednesday, June 14, 2006 1:30 p.m.**

The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa met in the Pension Office Conference Room on Wednesday, June 14, 2006 at 1:30 p.m. for a special meeting and executive session with the following members present:

Marc Hamlin, Chairman  
Patrick Lynch, Vice Chairman  
Dan Lombard

Jimmy Meier  
Cyndy Miller  
John Moors  
Tracy Walker

Also present were James B. Loper - Board Counsel, Patrick Gonyea – Counsel assigned by the fiduciary liability insurance carrier, and active and retired plan members.

I. Open Session

A. Review and approval of all previous Executive Session minutes pertaining to this litigation for complete record and to provide history/background to newer trustees on prior board directions. Plan Administrator recommends also placing on next regular board meeting agenda.

1. April 29, 2004
2. September 22, 2004
3. April 19, 2005
4. June 1, 2005
5. September 22, 2005
6. October 21, 2005
7. December 15, 2005 – deemed not necessary and cancelled day of
8. January 26, 2006
9. April 27, 2006
10. May 11, 2006

**It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve all previous Executive Session minutes pertaining to this litigation as listed above.**

- II. Request to address the board by retiree R. Pennington regarding 13<sup>th</sup> check. Mr. Pennington read a statement to the Board requesting that the board reconsider its position not to pay the 13<sup>th</sup> check until the outcome of the appeal is known.
- III. Request to address the board by retiree L. Vincent regarding 13<sup>th</sup> check. Mr. Vincent read a statement to the Board requesting that the board reconsider its position not to pay the 13<sup>th</sup> check until the outcome of the appeal is known.

Mr. Loper responded to questions raised by Mr. Pennington and Mr. Vincent, referring to his 6/2/2006 legal opinion and the Trustee's post trial brief, which was delivered to Carrington & Carrington on 4/10/2006.

- IV. A. Noted receipt of four drafts of Legal Opinion regarding payment of 13<sup>th</sup> check, originally commissioned in 1/26/2006 Executive Session: [Hamlin]
1. Original - April 26, 2006 – Distributed and collected at 4/27/2006 closed Executive Session. Confidential – Litigation Strategy/Work Product and under Attorney-Client Privilege (green, originally yellow).
  2. Note receipt of letter to pensioners dated 5/11/2006 for reference.
  3. 1<sup>st</sup> Revision - May 12, 2006 (pink).
  4. Note receipt of email dated May 15, 2006 regarding legal opinion.
  5. 2<sup>nd</sup> Revision - May 16, 2006 (orange)
  6. 3<sup>rd</sup> Revision - June 2, 2006 – which became public record by virtue of Board Counsel Loper mailing first class mail to pension office under different legal opinion number without confidential heading or label prior to Board receipt and approval (plain white).
  7. Noted receipt of memo dated 6/8/2006 from M. Lenker regarding review of legal opinion 2006-01 from accounting standpoint.

Ms. Miller asked Mr. Loper if the 3 previous drafts of the legal opinion contained in agenda item IV A. are public record, noting that the 6/2/2006 legal opinion has not yet been adopted by the Board. Mr. Loper stated that he didn't know and that he would have to look it up. Ms. Miller stated for the record that the Board did in fact have a legal opinion in front of them dated 4/26/2006 regarding payment of the 13<sup>th</sup> check, noting that the board was not working in a vacuum, that it did have pertinent legal information at that time at the 4/27/2006 Executive Session. Ms. Miller referred to the 4/26/2006 legal opinion, page 9, option 2a under the options section, asking Mr. Loper if he still stands by that legal opinion, the options set forth, and the risks to the fund as outlined in the legal opinion, specifically related to the potential loss of state premium tax money for non-compliance with 112.61 of the Florida Statutes. Mr. Loper advised that he still stands by the 4/26/2006 legal opinion. Ms. Miller advised Mr. Pennington on the record that the board did its due diligence in making its decisions in this matter.

Mr. Hamlin advised that Mr. Loper had advised him that he felt that some of the remaining agenda items were not appropriate for Executive Session and asked for legal guidance. Mr. Loper advised that he felt that only agenda items E and J were appropriate for Executive Session. Ms. Campbell recommended that if there is any question or concern, that the board should consider erring on the side of caution and discuss the issues in open, public session in the sunshine.

Ms. Miller again asked if the four versions of the legal opinion regarding payment of the 13<sup>th</sup> check are public record or not, and Mr. Loper advised that he is of the opinion that drafts 1 – 3 are exempt from public disclosure. **It was moved by Mr. Moors, seconded by Mr. Lynch and by unanimous vote to waive the rules and confidentiality on drafts 1-3 so that the documents become public record.**

**It was moved by Mr. Meier that after further review of the matter of delaying the 13<sup>th</sup> check until the outcome of the appeal is known, in the interest of reducing reasonable expenses and costs to the fund, including interest on the 13<sup>th</sup> check, and with full confidence in Judge Stoddard's ruling and that ruling being upheld by the Second District Court of Appeals, that the board proceed with**

**payment of the 13<sup>th</sup> check by June 30, 2006 or as soon as possible afterwards that the programming and actuarial determinations can be made. The motion was seconded by Ms. Miller for purposes of discussion.** During discussion, there were questions of Mr. Loper by board members on the differences between the four versions of the legal opinion on the payment of the 13<sup>th</sup> check. Ms. Miller asked if the risk of loss of state premium tax money was still present, and Mr. Loper advised that it was. Ms. Miller asked why that information did not appear in the 6/2/2006 legal opinion if it is still valid information. Mr. Walker asked why there were four drafts of the same legal opinion in the absence of board direction. Mr. Lynch asked for an explanation as well. Mr. Hamlin advised the board that he had discussed this matter with Mr. Loper and given him explicit direction on this legal opinion, which Mr. Loper either misunderstood or defied the Chairman's direct order. Ms. Miller reminded Mr. Loper that the previous board direction was to discuss with the Chairman and that the Chairman was delegated the authority to act in this matter. Mr. Loper advised that he misunderstood. Ms. Campbell asked Mr. Loper to point out where the board direction was to issue/amend this legal opinion four times in the minutes, the audiotapes or the verbatim transcripts of prior Executive Sessions and asked what was ambiguous about the email dated 5/15/2006 that was subsequently discussed in a conference call with the Chairman, Plan Administrator and Board Counsel. Mr. Hamlin advised that he felt that the Chairman's clear, specific, unambiguous directions were not followed by board counsel.

Mr. Lynch requested that the remainder of the agenda be covered before a vote is taken on the motion on the floor so that the board has all of the available information in front of them before voting to reconsider its previous decision. **Ms. Miller withdrew her second to the motion, and the motion died for lack of a second.**

**It was moved by Mr. Walker, seconded by Mr. Lynch and by unanimous vote to receive and file items IV A 1 – 7.**

- B. Discussion of posting on world wide web (NAPPA.org - National Association of Public Pension Attorneys) prior to 4/27/2006 Executive Session. [Lynch]  
Mr. Lynch expressed concern over the release of confidential litigation strategy information on the world wide web prior to the board being provided a copy of the 4/26/2006 legal opinion at the 4/27/2006 Executive Session and asked Mr. Loper for an explanation. Mr. Loper advised that he was attempting to conduct cheap legal research outside the state to save the board money by not conducting a Lexis/Nexis search. Mr. Lynch reminded Mr. Loper of their telephone conversation the prior week while he was acting Chairman and asked him why the results of that "cheap research" were not included in the 6/2/2006 version of the legal opinion.
- C. Due process considerations [Hamlin]
1. Note receipt of P&P 107 – Appearance Before Board
  2. Note receipt of P&P 108 – Hearings Before Board
- Mr. Hamlin expressed concern over the matter of due process, noting that Mr. Loper is now recommending that due process hearings be granted to Mr. Pennington and Mr. Vincent, and asked why Mr. Loper didn't bring up this matter previously while the board was deliberating. Mr. Loper responded that Mr. Pennington and Mr. Vincent are the only two plan members who have requested to be heard by the board on the 13<sup>th</sup> check issue. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item IV C.**

- D. Consideration of obtaining outside independent legal opinion regarding payment of 13<sup>th</sup> check and pending litigation, including review of: [Hamlin]
1. Plan document (pension contract/act)
  2. P&P 425 - 13<sup>th</sup> check policy
  3. P&P 108 – Procedures for Hearings Before the Board
  4. All legal opinions regarding payment of 13<sup>th</sup> check including drafts.
  5. IRS Tax Qualification – “definitely determinable” test

Ms. Miller advised that she relied upon the information contained in the 4/26/2006 legal opinion, and that the board made its decision in conjunction with the advice of counsel, and that while there has been nothing definitive presented to change the previous board direction, that she feels that the process has been tainted by board counsel and recommended that the board consider an outside legal opinion at this point. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote that the board seek an outside legal opinion in the matter of payment of the 13<sup>th</sup> check given the status of the current litigation.**

Mr. Lynch advised that while he was acting Chairman in Mr. Hamlin’s absence, that he exercised Chairman’s emergency authority and requested a limited scope outside legal opinion from Ron Cohen, a sole practitioner specializing in Florida public sector pension plans who has done work for the board before in this litigation and is familiar with the plan and the litigation issues. **It was moved by Ms. Miller, seconded by Mr. Walker and by unanimous vote that the board ratify Mr. Lynch’s exercise of Chairman’s emergency authority while he was Acting Chairman.**

[Mr. Meier departed the meeting at 2:45 pm for a deposition under subpoena]  
[agenda items were taken out of order]

- F. Interest on 13<sup>th</sup> Check [Lynch]
1. Note receipt of excerpt from verbatim transcript dated 1/26/2006 regarding inability to pay interest.
  2. Review of previous legal advice.
  3. Board direction.

**It was moved by Mr. Lynch, seconded by Mr. Moors and by unanimous vote to include the matter of interest, if it can be paid, if so from which portion of the fund, in the outside legal opinion and what would happen legally and actuarially if the 13<sup>th</sup> check is paid by the board, but then if the appeal overturns the lower court decision.**

- H. Recommend brainstorming with 4As in full public session, or with one designated trustee, to get simultaneous input from four disciplines, more efficient, effective and timely.  
[Campbell]

Ms. Campbell recommended that the board consider brainstorming with the 4As in full public session as the current process of only two of the As, the attorney and administrator, participate in the Executive Sessions isn’t working. Ms. Campbell noted that it would be far more efficient, effective and timely to include all four professionals to provide input from each of the four independent disciplines at the same time, rather than losing time in

between executive sessions, when the accountant and actuary raise issues not previously considered in Executive Sessions.

[a 5 minute recess was taken from 3:00 to 3:05 to change the audiotapes]

G. Recommend greater specificity in litigation billing [Lynch]

Mr. Lynch advised that he would like to see the billing of all professionals be in greater detail without revealing litigation strategy, because he feels that they are too generic. Mr. Lynch noted that the previous board direction, based upon the advice of counsel, was to bill in broad, general terms so that litigation strategy is not revealed; however, a significant amount of professional time and fees were incurred in developing a more detailed breakdown for the motion for taxable costs. Mr. Lynch advised that he is uneasy approving large bills such as legal fees for tens of thousands of dollars that simply say "work on file". For example, he explained that given the current legal bills, the board is unable to determine how much it cost to have four versions of the same legal opinion issued. **It was moved by Mr. Moors, seconded by Mr. Lynch and by unanimous vote to direct all professionals involved in the litigation to add greater specificity to their billing without revealing litigation strategy.**

I. Note receipt of letter dated 6/7/2006 from J. B. Loper to Chairman regarding Sunshine and public records issues and due process. [Hamlin]

Mr. Hamlin noted that he did not ask for this letter as Chairman, that Mr. Loper took it upon himself to prepare. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item IV I.** Mr. Loper recommended that the board not waive confidentiality of this document.

Explanation of Legal Requirements for Closed / Executive Session [Hamlin/Loper]

Mr. Loper advised that he has a settlement proposal to discuss with the board and requested that the board go into Executive Session for approximately 30 minutes.

IV. Closed / Executive Session for Pending Litigation

Pursuant to Section 286.011(8), Florida Statutes, only current trustees (Mark Bogush, Sharon Fox, Marc Hamlin, Dan Lombard, Patrick Lynch, Jimmy Meier, Cynthia Miller, John Moors, and Tracy Walker), Plan Administrator Jennifer Campbell, Board Counsel James B. Loper and Co-counsel Patrick Gonyea as assigned by the fiduciary liability insurance carrier in this litigation are authorized to attend the closed/executive session.

E. Note receipt of Motion for Taxable Costs [Hamlin]

1. Review of previous legal advice.
2. Noted receipt of email dated 5/18/2006 regarding invoices of professionals.
3. Board direction.

Mr. Loper began explaining agenda item J, and Mr. Hamlin advised that the board is on agenda item E and requested that Mr. Loper follow the agenda and the board's wishes on the items to be discussed. Mr. Loper proceeded with agenda item J.

J. Appeal process – Note receipt of memo to file from J. B. Loper dated 6/2/2006 regarding appeal timeline.

Mr. Hamlin requested that the letter dated 6/13/2006 from attorney Ron Cohen commissioned by the Acting Chairman under the Chairman's emergency authority be distributed for the board's review and discussion [confidential litigation strategy/attorney client privilege/exempt from public disclosure – clearly marked].

Mr. Loper made several recommendations for the board to consider in this matter.

E. Note receipt of Motion for Taxable Costs [Hamlin]

1. Review of previous legal advice.

2. Noted receipt of email dated 5/18/2006 regarding invoices of professionals.

3. Board direction.

There was extensive discussion.

[Mr. Meier returned to the meeting at 3:50 pm]

[Executive Session ended at 3:55 pm and the meeting was reopened to the public]

V. Open Session

[A brief recess was taken from 4:10 – 4:12 pm for the FBI to present Ms. Miller with a certificate of appreciation for graduating from the FBI Citizen's Academy. Ms. Miller made a brief statement of appreciation.]

Board motions regarding pending litigation, if any.

**It was moved by Mr. Moors, seconded by Mr. Walker and by unanimous vote to direct Mr. Loper and Mr. Gonyea to file a motion for an expedited appeal as recommended by Mr. Cohen.**

By consensus, the board agreed to schedule a special session on Thursday 6/29/2006 at 1:30 p.m. at which time Mr. Cohen's outside legal opinion should be available.

**It was moved by Ms. Miller, seconded by Mr. Walker to authorize the plan administrator to take all steps to be prepared to pay the 13<sup>th</sup> check as soon as possible after 6/30/2006 (programming, testing, etc.), including consulting with the appropriate and necessary professionals depending upon the outcome of the 6/29/2006 meeting.** There was discussion regarding the pros and cons of paying the 13<sup>th</sup> check vs. withholding the 13<sup>th</sup> check pending the outcome of all appeals, including goodwill, interest expense and funding source, overpayment/collections, state acceptance/loss of state premium tax money, due process, the effect on the appeal, among many other considerations. **Upon voting, motion carried by a vote of 6 – 1 with Mr. Hamlin, Mr. Lynch, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion, and Mr. Lombard opposed to the motion.**

The meeting was adjourned at 4:20 pm.

**July 27, 2006 board meeting: It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the minutes of the June 14, 2006 special meeting and executive session as written.**