

**MINUTES OF THE SPECIAL MEETING
OF THE BOARD OF TRUSTEES
OF THE
TAMPA FIREFIGHTERS & POLICE OFFICERS PENSION BOARD
3001 North Boulevard
Tampa, FL 33603 (813) 274-8550
Thursday, June 29, 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 Thursday, June 29, 2006 at 1:30 p.m. for a special meeting with the following members present:

Marc Hamlin, Chairman
Patrick Lynch, Vice Chairman
Mark Bogush
Sharon Fox

Jimmy Meier
Cyndy Miller
John Moors
Tracy Walker

Dan Lombard participated telephonically from 122 W. Bloomingdale Ave., Brandon, FL 33511.

Also present were Ron Cohen, outside counsel, and active and retired plan members.

Chairman Hamlin introduced Ron Cohen, outside counsel, to the board and audience and asked if the Board wished to have Mr. Loper, general board counsel, participate telephonically in today's meeting, or if Mr. Cohen's presence was sufficient. **It was moved by Mr. Walker, seconded by Mr. Lynch and by unanimous vote that Mr. Loper's participation in today's meeting was not necessary.**

Chairman Hamlin advised the board that today's meeting would be a *de novo* review of the payment of the 13th check issue, advising the board that today's meeting would be considering the issue anew. Mr. Hamlin noted that the board is not to consider previous discussions, reasons or decisions in today's review, that the board decision to be made today would be based entirely on today's board meeting. Mr. Hamlin advised that in keeping with the board's desire to be open and transparent, that based upon the advice of outside counsel, that the verbatim transcripts from the following four executive sessions be released to the trustees and any member of the public who would like a copy, and to take a ten minute recess to distribute and review: January 26, 2006, April 27, 2006, May 11, 2006, and June 14, 2006. Mr. Cohen concurred with the Chair's opening explanation and recommendations, and noted that there were limited redactions relating to mediation discussions which could not legally be disclosed. **It was moved by Mr. Walker, seconded by Mr. Lynch and by unanimous vote to distribute the verbatim transcripts of the following four executive sessions based upon the advice of outside counsel: January 26, 2006, April 27, 2006, May 11, 2006, and June 14, 2006.**

[a ten minute recess was taken]

1. Presentation of outside legal opinion regarding payment of 13th check – to be distributed at meeting and reviewed by Ron Cohen, outside counsel. Mr. Cohen advised that when he was commissioned to research and prepare this legal opinion by the board, that he was to be unencumbered by previous legal opinions and previous board decisions, that today's meeting was to be a *de novo* review.

In short, Mr. Cohen recommended that 1) the board of trustees delay payment of the June 30, 2006 13th check until all appeals have been successfully concluded in the Board's favor, and 2) that the board place the approximate \$9.5 million for payment of the 13th check (estimate as provided by the fund's actuary) in an escrow account for the sole purpose of paying the 13th check if and when all appeals are successfully concluded in the board's favor.

Mr. Cohen reviewed the results of his research and legal opinion in detail, advising that his advice is not given lightly, that the issues were given careful and thoughtful consideration, including the possible consequences of the board's actions, and that either option is fraught with legal peril. Mr. Cohen advised that as confirmed by the fund's actuary, Mr. Fernandez of Buck Consultants, and Ms. Campbell, the plan administrator, all three actuarial conditions for a June 30, 2006 13th check have been met; *however*, if the circuit court's decision is overturned, then the three conditions would not have been met, and a 13th check would not be due and payable. Mr. Cohen advised that he is confident in the board's administration of the fund, which decisions were affirmed by the circuit court in Judge Stoddard's ruling, and that he does not expect the circuit court's ruling to be overturned, but that possibility and uncertainty remains until all appeals have been successfully concluded in the board's favor. Mr. Cohen reviewed the possible consequences of paying the 13th check while the outcome of the appeal is unknown, including the possibility of it becoming an overpayment, which might have to be collected back from recipients, legal issues surrounding recovering overpayments, the fund's actuarial soundness, and statutory and constitutional considerations, including possible loss of state premium tax money for violation of 112.61, Florida Statutes.

Mr. Cohen reviewed the applicable statutes and constitutional provisions prohibiting intergenerational transfers as well as the board's obligation and authority to administer the pension fund in accordance with the plan documents and applicable statutes/laws and tax code. Mr. Cohen noted that he is not recommending that the board deny the 13th check payment, but rather to *delay* payment until it can be made with absolute certainty once the appeals have been successfully concluded in the board's favor. Mr. Cohen recommended that to demonstrate good faith that the board place the 13th check funds in a separate escrow account invested prudently so that there is no loss of principal, and to pay the actual interest earned on that escrow account to the 13th check recipients on a prorata basis. Mr. Cohen responded to questions from the board.

It was moved by Mr. Lynch, seconded by Ms. Fox and by unanimous vote to receive and file Mr. Cohen's legal opinion on the 13th check.

2. Noted receipt of the following:
 - a. Motion to expedite appeal dated 6/16/2006.
 - b. Fax dated 6/20/2006 from Second District Court of Appeals.
 - c. Letter dated 6/16/2006 from J. B. Loper – exempt from public disclosure.
 - d. Fax dated 6/26/2006 from J. B. Loper transmitting Carrington's letter to the Second District Court of Appeals in opposition to the motion to expedite.
 - e. Order of the Second District Court of Appeals dated 6/27/2006 denying the Trustee's motion to expedite appeal, noting that any motion for extension of time will be granted on extraordinary grounds only.

It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to receive and file items 2a – 2e.

3. Request to address the board by retiree R. Pennington regarding 13th check. Mr. Pennington requested that the board reconsider its position not to pay the 13th check until the outcome of the appeal is known.
4. Request to address the board by retiree L. Vincent regarding 13th check. Mr. Vincent requested that the board reconsider its position not to pay the 13th check until the outcome of the appeal is known.

It was moved by Ms. Miller, seconded by Mr. Walker to accept and apply the Ron Cohen legal opinion to delay the 13th check payment until all appeals have been successfully concluded in the board's favor, to place the 13th check payment amount in a separate escrow account with an appropriate escrow agent, utilizing Bowen, Hanes & Co. as a source of information/consulting in this matter, for the plan administrator to maintain a listing of eligible 13th check recipients, which listing is to be updated quarterly with the actual interest earned on the escrow account. After discussion and call for the question, motion carried by unanimous vote.

It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to direct the plan administrator to draft a letter to the eligible 13th check recipients advising them of today's board decisions for review, approval and signature by the Chair and Vice Chair with review by Mr. Cohen.

The meeting was adjourned at 2:45 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 29, 2006 special board meeting as written.