

Municipal Police Officers Retirement fund, investments

Number: INFORMAL

Date: October 24, 1996

Mr. M. Blair Payne
City of Lake City Attorney
Post Office Drawer 1707
Lake City, Florida 32056

Dear Mr. Payne:

As counsel for the Lake City Municipal Police Officer's Retirement Trust Fund you have asked this office to comment on the ability of the City of Lake City to adopt an ordinance altering the limitation on investments that the trustees of the fund are authorized to make. Attorney General Butterworth has asked me to review your letter.

You state that Lake City's Municipal Police Officers' Retirement Trust Fund was created pursuant to Chapter 185, Florida Statutes, and, therefore, is a "chapter" fund subject to the restrictions contained in Chapter 185. Section 185.10, Florida Statutes, recognizes the Division of Retirement (division) as the entity responsible for daily oversight and monitoring of police officers' retirement plans and for oversight and actuarial reviews conducted under Part VII of chapter 112. Pursuant to section 112.63(4), Florida Statutes, the division reviews and comments upon actuarial valuations and statements of retirement plans maintained by units of local government.

Section 185.03, Florida Statutes, creates the "Municipal Police Officers' Retirement Trust Fund" in each municipality of this state which has a regularly organized police department.[1] A board of trustees made up of five members is created to administer each trust fund.[2] Section 185.06, authorizes the board of trustees, among other things, to invest and reinvest the assets of the trust fund in bonds, stocks, and other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia. The statute, however, states:

"b. The board of trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 30 percent of the fund's assets.

This paragraph shall apply to all boards of trustees and participants. However, in the event that a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; where a special act, or a municipality by ordinance adopted prior to October 1, 1986, permits a greater than 30-percent equity

investment, such municipality shall not be required to comply with the aggregate equity investment provisions of this paragraph. Investments shall not be made in any stocks, bonds, or other securities owned or controlled by a government other than that of the United States"[3]

Thus, there is a general limitation on the percentage of investments that may be made in stocks, bonds, or other securities by the trustees of all municipal police officers' retirement trust funds. In municipalities with their own pension plans complying with section 185.35, Florida Statutes, however, the trustees of the fund for the plan may ask the governing body to enact an ordinance varying the investment procedures in section 185.06, Florida Statutes.

Section 185.35, Florida Statutes, addresses municipalities with their own pension plans and sets forth standards that such plans must meet in order to participate in the distribution of tax funds authorized under the statute. There is a distinction therefore, between "chapter plans" created under section 185.03, Florida Statutes, and "local plans" recognized in section 185.35, Florida Statutes.

The exception to the limitations on equity investments in stocks, bonds, or other securities in section 185.06(1)(b)4.b., Florida Statutes, would appear to apply only to "local plans." The Division of Retirement, however, has adopted the policy of allowing application of the exception to "chapter plans" such as yours, without jeopardizing the integrity of the plan.

While legislative clarification may be needed to provide clear direction in this area, the statutory duties imposed on the Division of Retirement in evaluating and approving local government retirement plans place that division in the position to review any proposed amendments to your plan. You may wish, therefore, to contact Ms. Patricia Shoemaker, Retirement Administrator of Municipal Police Officers' and Firefighters' Retirement Funds, for further consideration of this matter. Ms. Shoemaker may be reached at the following address:

Division of Retirement
Cedars Executive Center
2639-C North Monroe Street
Tallahassee, Florida 32399-1560
Telephone: (904) 922-0667

I trust that Ms. Shoemaker will be able to assist you in resolving the issue you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] Section 185.03(1), Fla. Stat. (1995).

[2] Section 185.05(1), Fla. Stat. (1995).

[3] Section 185.06(1)(b)4.b., Fla. Stat. (1995).