

KNOX COUNTY RETIREMENT AND PENSION BOARD

August 27, 2018

The Knox County Retirement and Pension Board met in regular session on Monday, August 27, 2018, at 1:30 P.M. in the Large Assembly Room, City-County Building, Knoxville, Tennessee.

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

Also present at the meeting were:

USI Consulting Group: Mr. Adam Davies and Ms. Brenda Fiddler

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

Attorney: Mr. Keith Burroughs

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

Others in attendance: Mr. Wayne Sellers, Nationwide, Mr. Nick McBride, Register of Deeds Office, Mr. Richard Trott, Sheriff Retiree, Mr. Mike Steely, Knox Focus, and members of the public

IN RE: CALL TO ORDER

Chairman Caldwell presided and called the meeting to order.

IN RE: AMENDMENTS TO AGENDA

Ms. Bennett stated that there was an amendment to the fee schedule that was emailed to Board members prior to the meeting.

IN RE: APPROVAL OF MINUTES OF JULY 23, 2018

Chairman Caldwell presented the minutes for July 23, 2018. Commissioner Thomas made a motion to approve the minutes for July 23, 2018. The motion was seconded by Commissioner Nystrom and unanimously approved.

IN RE: APPLICATIONS 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 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>
Anna C. Elliott	Schools	30 years 1 month	September 1, 2018
Betty J. Latham	Schools	38 years 0 month	September 1, 2018

A motion was made by Ms. Hemmelgarn to approve the application for retirement under the Defined Benefit Plan as presented and to authorize Trustee, State Street Bank, to make payment of the monthly benefits and credited service benefit. The motion was seconded by Mr. Raiden and unanimously approved.

IN RE: APPLICATIONS FOR RETIREMENT – UNIFORMED OFFICERS PENSION PLAN

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 Uniformed Officers Pension Plan, were presented for consideration:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>CREDITED SERVICE</u>	<u>EFFECTIVE DATE</u>
Rodney P. Bivens	Sheriff	32 years 5 months	September 1, 2018
Cynthia D. McNutt	Sheriff	8 years 6 months	September 1, 2018
Beneficiary of			
Warren McNutt			
Jackson L. Tramel	Sheriff	27 years 10 months	September 1, 2018

Mr. Burroughs stated his objection to the approval of the UOPP applicants' retirement to the extent the calculations include leave cash out. Mr. Burroughs asked if any applicant calculation included leave cash out and stated that if no vacation cash out was included, the applicant would not be named in the ongoing litigation. Mr. Burroughs requested the release of UOPP applicants' leave cash out information, contingent upon the individual applicant's permission, to avoid suing a retiree unnecessarily. He stated his opinion that obtaining consent from the applicant would be compliant with Tennessee Code Annotated §10-7-504 regarding an applicant's privacy and confidentiality. Mr. Owings agreed to correspond with UOPP applicants Bivins, McNutt and Tramel about Mr. Burroughs request.

A motion was made by Commissioner Nystrom to approve the application for retirement under the Uniformed Officers Pension Plan as presented and to authorize Trustee, State Street Bank, to make payment of the monthly benefits and credited service benefit. The motion was seconded by Ms. Hemmelgarn and unanimously approved.

IN RE: APPLICATIONS FOR RETIREMENT – 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>
Juanita Boring	JuvSvcs	14 years 6 months	September 1, 2018
Norma Burkette	Schools	22 years 1 month	September 1, 2018
Donna Collins	Schools	5 years 6 months	September 1, 2018
Lynne Crowell	Schools	5 years 9 months	September 1, 2018
Larry Grant	Schools	6 years 1 month	September 1, 2018
Nancy Hartsell	Schools	20 years 1 month	September 1, 2018
Martha Headrick	Schools	32 years 0 months	September 1, 2018
Jane Hunter	Schools	5 years 1 month	September 1, 2018

Nancy Hurst	Schools	14 years 1 month	September 1, 2018
Kathy Jones	Schools	5 years 11 months	September 1, 2018
Jerry Julian	KGIS	13 years 3 months	September 1, 2018
Connie Kidwell	Schools	29 years 9 months	September 1, 2018
Norma Lebow	CntyClk	23 years 11 months	September 1, 2018
Patricia Lukosius	Schools	11 years 2 months	September 1, 2018
Scott Manning	Schools	5 years 1 month	September 1, 2018
Renee McClure	Schools	9 years 1 month	September 1, 2018
Sandra McMurray	Schools	21 years 7 months	September 1, 2018
Karen Moody	Schools	29 years 11 months	September 1, 2018
Melinda Montgomery	Schools	6 years 0 months	September 1, 2018
Donald Payne	Schools	10 years 10 months	September 1, 2018
Cynthia Price	Schools	12 years 4 months	September 1, 2018
Nancy Saylor	Schools	21 years 0 months	September 1, 2018
Paula Smith	Schools	20 years 1 month	September 1, 2018
Patricia Sullivan	CntyClk	10 years 0 months	September 1, 2018
Susan Tobey	Schools	9 years 1 month	September 1, 2018
Sara Vesser	Schools	17 years 1 month	September 1, 2018
Bruce Wuethrich	EPW	25 years 6 months	September 1, 2018
Kathy Wykoff	Schools	18 years 1 month	September 1, 2018

A motion was made by Commissioner Brantley 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 the 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 reported on the following items:

- **FY18 Audit Status** – The FY18 audit is in progress. The internal audit is scheduled to be complete by the end of the week.
- **Denver Conference September 11-13** – The Denver Conference is scheduled September 11 to 13. The conference will involve meeting several of the mutual fund managers and staff. Board Members and staff attending the conference are Mr. Raiden, Ms. Foster, Ms. Bennett, Ms. Schroeder, Mr. Cole and several USI representatives.
- **New Board Member Orientation** – Orientation for new Board members is tentatively scheduled for September 17, 2018, with the time to be determined.

Ms. Bennett will reach out to members who are appointed to the Board. The new Board orientation will be open for new and current Board members.

IN RE: RENEWAL OF FIDUCIARY INSURANCE POLICY EFFECTIVE SEPTEMBER 1, 2018

Ms. Bennett reported on the renewal of the fiduciary insurance policy included in the Board meeting packet, effective September 1, 2018. She noted the premium increase of \$25.00. A motion was made by Commissioner Nystrom to accept the renewal of the fiduciary insurance policy, effective September 1, 2018. The motion was seconded by Commissioner Schoonmaker and unanimously approved.

IN RE: REPORT OF INVESTMENT COMMITTEE

- **Monthly Rates of Return** – Commissioner Brantley presented the rates of return for the Defined Contribution Plans as of July 31, 2018 and stated the overall rates of return are in line with the investment objectives.
- **Report of Investment Committee meeting August 14, 2018** – Commissioner Nystrom and Mr. Webb requested a simple summary document showing DC plan investment performance from USI for additional packet content. Mr. Davies stated the request was in the process of being implemented.

IN RE: REPORT OF LEGAL COUNSEL

Mr. Owings reported on the court filings for July. Total of 21 court filings: 9 by Board legal counsel, 8 by the County and 4 by the Court. Mr. Owings stated the filings made to date: 2 for response to writ of cert, 1 for preparation and redaction of documents, 7 court filings in response to pleadings filed by Knox County, 2 in response to subpoenas, 2 in response to motions to strike, 1 response to the temporary injunction filed by Knox County, 2 orders in response to court hearings, 3 court hearings (July 3rd, 23rd and 24th). August 1st was the court hearing on Knox County's motion for temporary injunction, which, at the hearing, was waived in favor of an expedited trial set for November 12, 2018. Mr. Owings stated the filings of the Board have been in response to Knox County filings. To this date there have been 7 cases filed, which includes the one against Mr. Mason and his firm and the original Gass case. There are 4 active cases. There is a 5th case against the officer who retired in June but the Board has yet to be served. Legal counsel has agreed to stipulate to the authenticity and admission into evidence of over 5,000 pages of documents for use in the trial. Commissioner Nystrom inquired as to the meaning of stipulation. Mr. Owings stated in a legal context, stipulation is defined as an agreement regarding a particular document as to its authenticity and/or admission into evidence.

Commissioner Nystrom inquired about the term of *res judicata*. Mr. Owings stated the court has been asked to make a determination whether the Board has appropriately administered leave cash out in the UOPP. That issue, once being decided, can be appealed. Once appeals have been exhausted, the judgment will be considered *res judicata*, or final, as to the parties involved.

Mr. Burks reported the Board's motion to dismiss is set for September 7, 2018. An issue that has been brought up with the case, is whether the judgment would be effective to parties that are not before the court. In addition, and in an effort to resolve that issue, a motion is before the court to determine whether

a class action is necessary. The motion for the certification of a class is scheduled for September 7, 2018, after the argument on the motion to dismiss, time permitting, or alternatively to be heard on September 20, 2018. Mr. Burks reported the trial is set for November 12,, 2018, pending other legal matters being resolved prior to that date. Commissioner Nystrom questioned how a class or subclass is qualified. Mr. Burks replied that would be up to Chancellor Weaver, but at a minimum, he could see the retirees and the active participants as separate classes.

Mr. Mason had no report.

IN RE: REPORT OF ACTUARY

Mr. Davies had no report.

IN RE: APPOINTMENT OF NOMINATING COMMITTEE FOR OFFICERS

Chairman Caldwell appointed Mr. Zack Webb, Ms. Jennifer Hemmelgarn and Commissioner John Schoonmaker for the nominating committee for officers.

IN RE: RECOGNITION OF SERVICE

Ms. Bennett recognized the service of Commissioner Bob Thomas and Commissioner Ed Brantley on the Retirement and Pension Board.

IN RE: APPROVAL OF PAYMENT – STATEMENT OF ACCOUNT

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

FEE SCHEDULE

Invoices for AUG 2018 (Legal Invoices are approved for the previous Months Expense)	Fiscal 19 YTD Approved Invoices 08/31/2018	AUG Invoice For Approval	Fiscal 19 YTD Approved Invoices 08/31/2018
BENXL Invoice # 102932		\$0.00	
TOTAL BENXL	\$0.00	\$0.00	\$0.00
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #		\$0.00	
***TOTAL KENNERLY, MONTGOMERY & FINLEY, P.C.	\$0.00	\$0.00	\$0.00
Owings, Wilson & Coleman Invoice # 9912M - 07/31/2018 Invoice # 9916M - 07/31/2018 Invoice # 9917M - 07/31/2018 Invoice # 9924M - 07/31/2018		\$6,663.63 \$4,670.26 \$56,779.47 \$1,421.25	
*** TOTAL OWINGS, WILSON & COLEMAN	\$0.00	\$69,424.60	\$69,424.60
JUSTICE, NOEL & BURKS Invoice # 200-713 - 08/22/2018		\$18,266.00	
TOTAL JUSTICE, NOEL & BURKS	\$0.00	\$18,266.00	\$18,266.00
LEWIS THOMPSON (Mary Ann Slackhouse) Invoice # 332777		\$16,612.60	
TOTAL JUSTICE, NOEL & BURKS	\$0.00	\$16,612.60	\$16,612.60
USI CONSULTING GROUP Invoice # 90023046 Invoice # 90023087		\$37,000.00 \$44,444.22	
TOTAL USI CONSULTING GROUP	\$0.00	\$81,444.22	\$81,444.22
Invoices for AUG 2018	\$0.00	\$169,124.82	\$164,537.32

		Fiscal 19 YTD
*** Retainer not included in approved billings for the Board		\$0.000
Owings, Wilson & Coleman Retainer	\$4,000 per month	\$24,000
Kennerly Montgomery Retainer	\$12,000 per month	\$160,000
Court Reporter for Hearings		\$160.00
Fees Received from QDRO Participants	\$600 (DC Fee) \$2,000 (DB Fee)	\$0 \$0

*QDRO fee is Paid to Retirement Office which off sets the legal fee

After review of the statement of accounts and invoices, a motion was made by Commissioner Nystrom 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

Chairman Caldwell asked if there was a motion to adjourn. Commissioner Thomas made a motion to adjourn, which was seconded by Commissioner Brantley, and the meeting was adjourned.



MAYOR TIM BURCHETT, CHAIRMAN
BY PROXY, CHRIS CALDWELL



MS. TRACY FOSTER, SECRETARY

EGERTON McAFEE

Joe Mont McAfee
Lewis C. Foster, Jr.
Stephen A. McSween
Rockforde D. King
Jonathan D. Reed¹
Ronald T. Hill
Keith H. Burroughs
Reuben N. Pelot, IV
Norman G. Templeton
Cheryl G. Rice^{2,3}
James M. Cornelius, Jr.
Tracy G. Edmundson¹
R. Christopher Trump
Nicholas J. Chase
P. Newman Bankston
John L. Wood
Melissa B. Carrasco

Egerton McAfee Armistead & Davis,
P.C.

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All Attorneys Licensed in Tennessee
Additional Bar Memberships:
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Andrew B. Tucker
Soojin Kim⁵

Of Counsel:
Dan W. Holbrook⁶

Deceased:
Wm. E. McClamroch, III
(1960-2018)

August 24, 2018

VIA HAND DELIVERY and VIA EMAIL

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 5 of the
Agenda for the Board's August 27, 2018 Meeting**

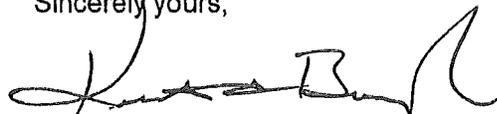
Dear Ms. Bennett:

Please find enclosed the captioned Motion on behalf of Knox County. We ask that this Motion be addressed by the Board before making any determinations regarding the Item 5 Applications of Rodney P. Bivens; Cynthia D. McNutt, Beneficiary of Warran McNutt; and Jackson L. Tramel for UOPP benefits and any other UOPP applicants that are added to the agenda for the Board's August 27, 2018 meeting. I request the opportunity to be heard on this Motion at the August 27th Board meeting.

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

With kind regards.

Sincerely yours,



Keith H. Burroughs

KHB

Enclosure: As stated above

Cc: Richard B. Armstrong, Jr., Esq.
Melissa B. Carrasco, 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 5 OF THE AGENDA
FOR THE BOARD'S AUGUST 27, 2018 MEETING**

Comes now Knox County, Tennessee, by and through the undersigned counsel, and moves to intervene and objects to the approval by the Knox County Retirement and Pension Board ("Board") of the applications of Rodney P. Bivens; Cynthia D. McNutt, Beneficiary of Warrant McNutt; and Jackson L. Tramel for the Uniformed Officers Pension Plan ("UOPP") retirement benefits on Item 5 of the Agenda for the Board's August 27, 2018 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 and any other Participants added to any amended agenda for the Board's August 27, 2018 meeting.

Knox County moves to include by reference as part of the record on this matter: this Motion and all prior Motions filed by Knox County regarding UOPP retirement applications with attachments; 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 August 27, 2018 meeting; and any additional items that may be deemed relevant by the Board's General Counsel.

MEMORANDUM IN SUPPORT OF MOTION

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, Board Director Kim Bennett states that she reviewed the Sheriff's General Order with counsel for the Board "to determine the treatment of vacation pay cash-out..." (hereinafter "UVCO"). 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. However, 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.

The Pension Board's actions 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. No such resolution has ever been considered by the Knox County Commission.

Analysis

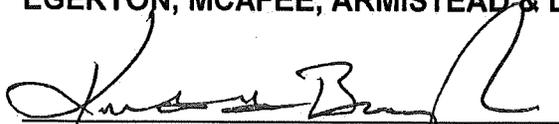
On October 18, 2017, Director Bennett produced to Knox County a copy of the original 2007 UOPP. Leave cashout is not included and Compensation is defined as "salary." Thus, leave cashout has never been permitted for inclusion in the calculation of pension benefits by the Knox County Charter. The phrase "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 and the 2017 Restated UOPP provide 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 retirement benefits on the

August 27, 2018 Board Agenda, Item 5, include any accrued leave cashout in their pension calculations, they are *ultra vires* and unlawful, and Knox County objects.

Respectfully submitted this 24th day of August, 2018.

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



Keith H. Burroughs, Esq. (BPR 014255)

Jonathan D. Reed (BPR 012769)

Melissa B. Carrasco (BPR 029094)

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