

# CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

---

## MEMORANDUM

**TO:** Gloria Johnson, Finance Director

**FROM:** James T. Walker, Assistant City Attorney

**SUBJECT:** Jurisdiction of Board Consider Credit for Sick Pay in Approval of Retirement for Mazella Smith

**DATE:** May 28, 2014

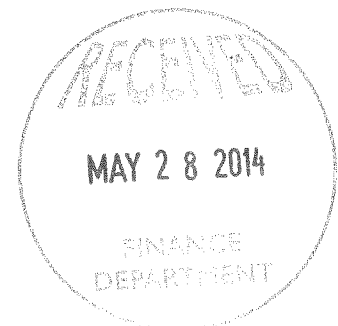
---

This memo responds to request by the Retirement Board for a memorandum on the subject of its jurisdiction to reconsider approval of Mazella Smith's Application for Retirement by including accumulated sick time in her credited **compensation**. Such memorandum was prepared and addressed formally to Tom Perona as Chair. It is enclosed herewith. Please see that a copy is included in each board member's agenda packet. Thank you for your consideration.

*per James T. Walker*  
James T. Walker, Esq.  
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney



# CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

---

## MEMORANDUM

**TO:** Tom Perona, Chair, Fort Pierce Retirement Board

**FROM:** James T. Walker, Assistant City Attorney

**SUBJECT:** Jurisdiction of Board Consider Credit for Sick Pay in Approval of Retirement for Mazella Smith

**DATE:** May 28, 2014

---

This memorandum serves as response to request by the Board for a memorandum on the parameters of jurisdiction governing the Board's ability to reconsider approval of Mazella Smith's Application for Retirement by including accumulated sick time in her credited **compensation**. She is seen to contend that approval heretofore of her retirement application should have included credit for 688 hours of sick time accumulated at the time of her involuntary separation from employment. The City, for its part, is understood to contend that there is no such entitlement to inclusion of sick time. The City's position is that no such sick time was ever paid, because she was involuntarily separated upon a finding that she was not then in "good standing".

The Board is of course reminded that it will be sitting in a quasi-judicial capacity when it hears the Application. This means that the Petitioner has the right to be heard on this, in a setting wherein she is provided with fundamental due process. That is, she is to receive notice of the proceeding, she may be represented by counsel, may offer evidence through witnesses or exhibits, and may cross-examine any contrary witnesses offered by the City. Correlative rights are enjoyed by the City in its oppositional capacity. The Board shall render a decision on her request for Reconsideration only after considering all evidence and argument. The decision should be based solely upon the evidence and applicable law, in a manner consistent with its Rules of Procedure.

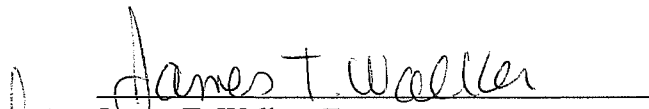
The Board's jurisdiction is defined by Code Section 13-71, which states that: "There is hereby created a retirement board in which is vested the power and authority to administer, manage and operate the retirement and benefit system, and to **construe and make effective the provisions of this article.**" (e.s.) The power of the board is thus circumscribed by the provisions of Chapter 22. It cannot act outside the boundaries of Chapter 22. cf. *City of Miami Beach v. Cleary*, 75 So.2d 792 (Fla 1954)("It perfectly obvious that if this accumulated leave has no relation to either the right to retire or the amount to be received in the event of retirement, it should not be burdened for the purpose of supporting the retirement system.", pg. 795); see also *City of Miami Beach Police v. Board of Trustees*, 581 So.2d 229 (Fla 3<sup>rd</sup> DCA 1991).

Inclusion of sick time in the computation of *compensation* as determined for retirement purposes is covered by Code section 13-16, which sets out the following definition: “*Compensation* means the salary or wages **paid** an employee for personal services rendered a participating employer. ‘*Compensation*’ includes: ... (6) **Payments** in consideration of unused sick and vacation time... .” (e.s.) **IF** the City made payments of sick time to the Applicant, then she is entitled to their inclusion, to the allowable extent. The Board may readily hear the question of whether or not such payments were made by the City and, if they were, the extent thereof. That directly relates to the question of the “compensation” received by the employee for purposes of her retirement. But **IF** payments were **NOT** made, and the City’s failure to make such payments of sick time did not relate directly to the Applicant’s right of retirement under Chapter 13, **THEN** the Board does not possess jurisdiction to address the propriety of the City’s refusal to make payment. Instead, the forum to contest the City’s nonpayment of sick time lies elsewhere. The Retirement Board does not itself act as a Super Civil Service Board to hear disputes between employees and the City about their entitlement to various fringe benefits or to adjudicate contract rights. Nor is it charged with the task of second-guessing personnel decisions of the City. It’s portfolio is limited to application of Chapter 13.

In other words, it is recommended that the Board may determine whether the City paid wages to the employee and made payments in consideration of unused sick time. If the payments were made, the Board may credit them for retirement purposes to the extent allowable. But if the City did not make payment of wages or unused sick time, the Board should not interject itself in the middle of any dispute between the City and Ms. Smith over whether such nonpayment was proper or not.

It is hoped that the foregoing fairly addresses the Board’s request for an opinion in this matter. I am of course available for such further questions or clarifications as may be deemed helpful and thanking you for your attention, I am and continue to remain, as always,

Most Cordially and Respectfully Yours,

  
for James T. Walker, Esq.  
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney  
Robert J. Bradshaw, City Manager  
Tony Barnes, Director of Human Resources