

CITY OF FORT PIERCE *Florida*



OFFICE OF THE CITY ATTORNEY
CITY HALL, 100 NORTH U.S. 1
P.O. BOX 1480
FORT PIERCE, FLORIDA 34954-1480

TEL. (772) 460-2200
FAX (772) 466-5492
www.cityoffortpierce.com

June 1, 2015

Via regular mail

Mr. Robert B. Creswell, Jr.
1402 Nebraska Avenue, Unit 3b
Fort Pierce FL 34950-5220

Re: Robert B. Creswell, Jr. – Pension Retirement Fund

Dear Mr. Creswell:

This letter serves to acknowledge receipt of, and to thank you for, yours in the above of May 22, 2015, a copy of which is enclosed herewith for convenient reference. Also included and returned is your check as made payable to the City of Fort Pierce in the sum of \$1,240.23. This was originally refunded to you as your contribution taken from supplemental pay pursuant to Code Section 13-27(3) with 3.5% interest per annum or \$193.46. At the time the City made such refund to you it was determined that there is no eligibility for taking of credit for intervening military service because you received credit for the time served as a military retirement benefit. Please see Code Section 13-27(4) enclosed. Moreover, there was requirement that application for such service be made within one year of the date of your return to City employment. Please see Code Section 13-27(1) enclosed.

You do remain eligible to purchase military time and that subject is covered by Code Section 13-28, enclosed.

It is hoped that the foregoing explanation is helpful to your intentions in the above. But should you disagree, you do have the right to request a hearing before the Retirement Board, by means of submitting a formal Application for Benefits, through the City Dept. of Finance, in accordance with Board Rule 9, on a form prescribed by the Board. It would then be the function of the Board to determine, in a quasi-judicial proceeding, whether you are entitled to the benefit claimed, in light of controlling law. Should there be any questions about the Board's role and

Mr. Robert B. Creswell, Jr.
June 1, 2015
Page 2 of 2

involvement in determining benefit entitlement under the City's Code of Ordinances, a copy of the Board's Rules of Procedure may be requested from the City's Finance Department. Thanking you once again for your consideration and attention, I am and shall ever continue to remain, as always,

Most Cordially and Respectfully Yours,

James T. Walker

James T. Walker, Esq.
Assistant City Attorney

/mlp
Enclosure

cc: Robert V. Schwerer, City Attorney
Gloria Johnson, Retirement Board Secretary
Kevin S. Doty, Esq.

ROBERT B CRESWELL JR
1402 Nebraska Ave Unit 3b 772-201-7437
Fort Pierce, FL 34950



1548

63-751/631
BRANCH 00030

5-22-15 DATE

PAY TO THE ORDER OF City of Fort Pierce Pension Plan \$ 1,340.23
One thousand three hundred forty dollars ²³/₁₀₀ DOLLARS



WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR Reimbursement to Pension

⑆063107513⑆1000172463228⑆ 1548

©2008 WACHOVIA BANK

May 22, 2015

MAY 27 2015

James Walker, Esq.
North 100 US 1
Fort Pierce, FL 34590

RE: Robert B. Creswell, Jr. – Pension Retirement Fund

Dear Mr. Walker,

Enclosed please find my check in the amount of \$ 1,340.23. This is a reimbursement for money that was included with my regular wages (pay ending date 05/09/15) and direct deposited into my account without my knowledge. The \$1,340.23 paid to me is a mistake.

On September 3, 2013 Ms. Christine Paz (Retirement Clerk) thru Ms. Gloria Johnson (Finance Director) sent me a memo regarding my Military Leave. Attached is a copy of that memo.

July 13, 2009 a Letter of Agreement between myself and the City of Fort Pierce. Attached is a copy of this Agreement. The letter is signed by David. L. Recor, ICMA-CM City Manager, with copies to:

The City Attorney, Mazella D. Smith, Administrative Services Director,
Harold Hopkins, Solid Waste Director,
Robert V. Schwerer, City Attorney,
Spencer Gilbert, Esquire, Steve DiPalma,
CSAB Chairman and
Kevin S. Doty, Esquire, Attorney for R. Creswell.

I ask that you reimburse the proper City Account.

Should you have any questions please feel free to contact me at 772-201-7437 or email robbienomad@aol.com

Sincerely,



Robert B. Creswell, Jr.

Cc: Kevin S. Doty, Esquire, Attorney for Robert B. Creswell, Jr.
Robert V. Schwerer, City Attorney

Sec. 13-27. Credit for intervening military service.

A member who left the employ of a participating employer to enter the armed forces of the United States during any period of compulsory military service, and who reenters the employ of a participating employer and again becomes a member, shall have such armed service, not to exceed a total of five (5) years, credited as participating employer service; if the following conditions are satisfied:

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- (2) The member's reemployment is on the basis of the personnel rules and regulations of the member's participating employer;
- (3) The member pays the retirement system the amount of accumulated member contributions the member may have withdrawn, together with six (6) per cent annual compound interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of military service to be credited a member, the retirement board shall have final power to determine the period. During the period of such armed service, contributions to the retirement system shall be suspended; and
- (4) The same period of service has not been used to obtain or increase a benefit from another retirement program.

(Ord. No. K-469, § 1, 2-20-07)

TO: ROBERT B. CRESWELL, JR.
AGENCY: CITY
FROM: CHRISTINE PAZ
RETIREMENT CLERK
DATE: 08/13/13
SUBJECT: MILITARY SERVICE BUY BACK

THE COMPUTATIONS FOR PURCHASING YOUR MILITARY SERVICE
TIME FOR GENERAL RETIREMENT* LONGEVITY IS AS FOLLOWS:

EMPLOYER CONTRIBUTION 16.50%
(THIS PORTION IS NON REFUNDABLE)

EMPLOYEE CONTRIBUTION 5.16%

21.66% PER YEAR

YOUR ANNUAL SALARY \$ 66,352.00

PERCENTAGE COST 21.66%

COST PER YEAR OF SERVICE \$ 14,371.84

MAXIMUM ALLOWABLE SERVICE TIME PURCHASE IS 4 YEARS
**THE 4TH YEAR WILL BE CALCULATED BY THE ACTUARY AT THE FULL
ACTUARIAL COST.**

ONE YEAR	\$	14,371.84
TWO YEAR	\$	28,743.69
THREE YEAR	\$	43,115.53
FOUR YEARS		<input type="text"/> (ACTUARY CALCULATED) \$400.00 FEE

**A COPY OF YOUR DD214 SHOWING ACTIVE DUTY SERVICE MUST BE
SUBMITTED WITH YOUR SERVICE BUY BACK**

MAKE CHECK PAYABLE TO: FORT PIERCE RETIREMENT TRUST FUND

THESE FIGURES ARE EFFECTIVE UNTIL FISCAL YEAR END. THE FOLLOWING CHANGES WOULD
EFFECT THESE AMOUNTS: PAY RAISE, CHANGES IN ACTUARIAL COMPUTATIONS,
ORDINANCE CHANGE.

* NOTE: ANY LONGEVITY INCREASE IS FOR THE GENERAL RETIREMENT PLAN
ONLY AND WILL NOT EFFECT ANY SUPPLEMENTAL PLANS

excel\misc\military buyback memo

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Florida



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July 13, 2009

Mr. Robert Creswell
1402 Nebraska Avenue, Unit 3-B
Fort Pierce, FL 34950

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Re: Reinstatement from Military Service

Dear Mr. Creswell:

This letter serves to confirm the terms of the arrangement between you and the City of Fort Pierce that resolves all issues in your presently pending appeal before the Civil Service Appeals Board.

Initially, please be informed that, if you wish to return to employment with the City upon your termination from active military service, the City will make provisions to reinstate you in a position as nearly comparable as possible in duties to the position you previously held when you left for military duty and at the salary you would have received had you continuously remained employed by the City. Our records indicate that military leave will expire on September 13, 2009. Please provide the Administrative Services Director with written notice of your intent to return so that we can start the process of searching for such a position.

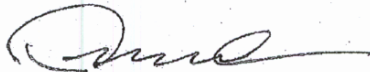
Additionally, the City will supplement your military pay for the difference, if any, between the salary you were receiving from the City and your military pay while you are on active duty, retroactive to the last payment you received from the City; provided, however, that depending upon the amount of such difference, such supplement may be subject to the approval of the City Commission. Accordingly, if you have not already done so, please provide us with verification of your military pay from the date you left for military duty.

Lastly, since the arrangement summarized herein resolves the issues in your referenced presently pending appeal before the Civil Service Appeals Board, you will withdraw or dismiss such appeal by providing written notice thereof to the Civil Service Appeals Board through the Administrative Services Director with a copy of such notice being sent to the City Attorney.

Should you have any questions or concerns, please do not hesitate to contact my office at 772-460-2200 ext. 300.

Thank you for your commitment to our country and the City of Fort Pierce.

Sincerely,



David L. Recor, ICMA-CM
City Manager

DLR:jdr

c: Mazella D. Smith, Administrative Services Director
Harold Hopkins, Solid Waste Director
Robert V. Schwerer, City Attorney
Spencer Gilbert, Esquire
Steve DiPalma, CSAB Chairman
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Sec. 13-27. - Credit for intervening military service.



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(Ord. No. K-469, § 1, 2-20-07)

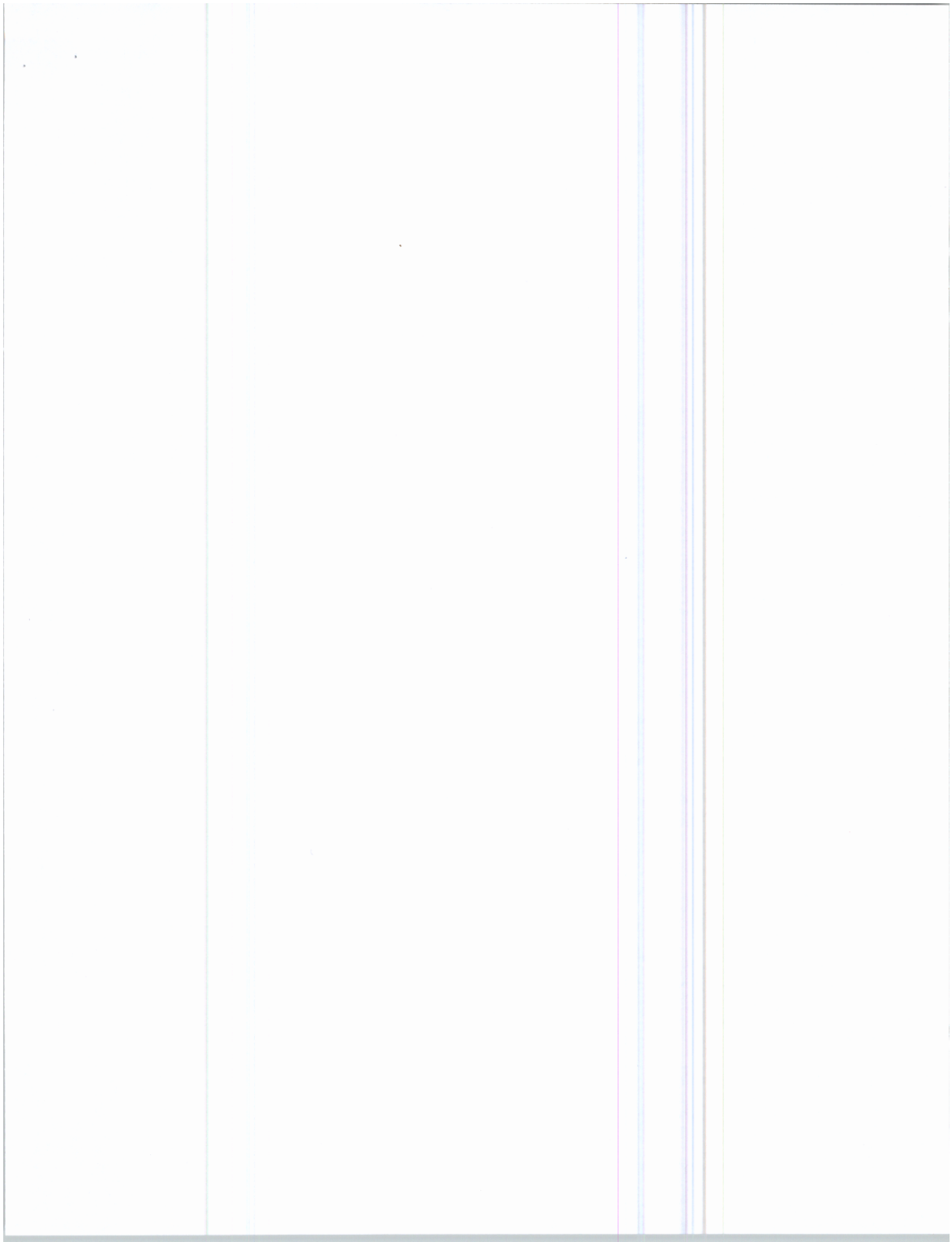
Sec. 13-28. - Purchase of active duty military service time.



A member with military time on active duty for the United States forces may purchase up to four (4) years of active duty military time if the following requirements are satisfied:

- (1) The member has been employed by participating employers for at least five (5) years and is vested in the retirement system as provided in [section 13-32](#); and
- (2) The purchase is completed by the member's retirement date.

The money required to be paid for the purchase of military time as provided in this section shall be due when the purchase is requested. The employee will pay the full cost of the purchase of said military credit, and no part of the cost will be paid by the employer. If an employee is already receiving retirement benefits from the military services of the United States, the employee will not be eligible to purchase military service credit under this provision. The cost of purchasing the military service credit will be determined by percentages based on current annual base salary of the employee at the time that option is exercised.



May 22, 2015

James Walker, Esq.
North 100 US 1
Fort Pierce, FL 34590

RE: Robert B. Creswell, Jr. – Pension Retirement Fund

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MAY 27 2015

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Sincerely,



Robert B. Creswell, Jr.

CERTIFIED MAIL®



7014 1820 0000 4123 4919

FINANCE DEPARTMENT MEMORANDUM

TO: Robert B. Creswell, Jr.

THRU: Gloria Johnson, Finance Director

FROM: Christine Paz, Retirement Clerk

DATE: September 3, 2013

SUBJECT: Military Leave

In reviewing Chapter 13 - Pensions and Retirements, Article II, Retirement Systems for Officers and Employees of Participating Employers, Division 1, Sec. 13-27 states that you may purchase the three years that you served in the Military for service credit. The contributions that you made while on Military Leave will be reimbursed to you in the amount of \$1,191.80. Enclosed is a copy of Section 13-27 for your review. You cannot receive credit with the City and the Military at the same time. The time you served in the Military is service time earned with them. If you want the same credit with the City you may purchase it. Attached is a recap of how much it would cost you for each year.

If you have any questions, please do not hesitate to call me.

Thank you.

Enclosure

/cp

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FROM: CHRISTINE PAZ
RETIREMENT CLERK
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excel/misc/military buyback memo

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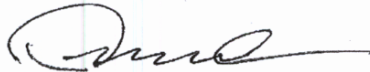
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City Manager

DLR:jdr

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Spencer Gilbert, Esquire
Steve DiPalma, CSAB Chairman
Kevin S. Doty, Esquire, Attorney for R. Creswell

1548
63-751851
BRANCH 0080

5-22-15

DATE

ROBERT B CRESWELL JR
1402 Nebraska Ave Unit 36 772-201-7437
Fort Pierce, FL 34980



\$ 1,340.23

PAY TO THE ORDER OF City of Fort Pierce Pension Plan

One thousand three hundred forty dollars and 23/100

AMOUNT IN FIGURES

IN DOLLARS



WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR DEPOSIT ONLY
FOR REMITTANCE TO PENSION

⑆0631075131⑆1000172463228⑆ 1548

MP



Interoffice Memorandum

From The Office Of The
Director of Finance

TO: James Walker, Retirement Board Attorney
FROM: Gloria J. Johnson, Secretary/Treasurer *G. Johnson*
RE: Robert Creswell Credit Intervening Military Service
DATE: May 27, 2015

MAY 28 2015

Issue: Mr. Creswell wants to receive credited service in the R&B System for approximate three years of military time, September 15, 2008 thru September 14, 2011.

Dates of Importance:

Mr. Creswell made this request via email to Christine Luna in March, 2013.

Sent a memo to Mr. Walker via email 5/13/2013.

September 3, 2013 sent a memo to Mr. Creswell explaining the City had to reimburse his contributions and he could purchase the three years as military time. Sent him the refund amount and computations as to what the three years would cost.

My staff and I have had numerous conversations with Mr. Creswell explaining the Code to him. He just refuses to accept the Code as written. I instructed Christine to return his contributions (Sec. 13-27 (3)) that were taken out of the supplemental pay he received from the City when he was on active military duty. On May 15, 2015, he was refunded \$1,340.23 his contribution of \$1,146.77 at 3.5% interest or \$193.46. The \$1,340.23 is the amount he received in his pay check and the amount on his personal check he sent to you.

Conclusion:

He does not satisfy Section 13-27. (4) Of the Code because he received credit for the time he served as a military retirement benefit. He also did not comply with Section 13-27. (1) he did not make application within the year he returned to the employ of the City.

I am requesting you return Mr. Creswell's check and explain to him why he has to purchase the three year of military time if he wants the years computed in his final average salary.

Staff has relied on the sections below in the Code to form an opinion. Also, attached are numerous memorandums and emails as supporting documentation.

- **Sec. 13-27. - Credit for intervening military service.**

A member who left the employ of a participating employer to enter the armed forces of the United States during any period of compulsory military service, and who reenters the employ of a participating employer and again becomes a member, shall have such armed service, not to exceed a total of five (5) years, credited as participating employer service; if the following conditions are satisfied:

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"Jim Walker"
<jimw@jimwalkertlaw.com>
05/31/2013 01:42 PM

To <ChristineLuna@city-ft Pierce.com>,
cc <MaryPeregrin@city-ft Pierce.com>,
<ChristineFamularo@city-ft Pierce.com>,
<gjohnson@city-ft Pierce.com>,
bcc
Subject Robert Creswell, Pension Benefits <Watchdog: Virus checked>

Christine, thank you for yours to me of 5/20, regarding calculation of pension entitlement of Robert Creswell. The City Attorney's Office is happy to provide legal advise to staff where needed. But please allow me to readdress with you the parameters w/in which any such request for advise should be framed, so that it may be addressed quickly and efficiently. Since our office answers in this fashion to all departments of the City, responding to many such concerns, it is necessary that these guidelines be followed.

Please understand that you are the expert. You work with the Code daily, with a small number of very specialized, technical sections. You are therefore more familiar with the Code's routine application than am I. But of course we know that occasionally the odd situation comes along that may not call for the usual response. You may be stumped, and your supervisor may not have the answer. In than instance, the City Attorney's Office is happy to assist in resolving the question. But please don't force me to spend time guessing about the nature of your issue, or the specific code language that may or may not be applicable. In your memo you advise that a reading of the Code leaves you in doubt about whether Mr. Creswell's pension cost was calculated properly. Fine. But what section(s) are you looking at? And how is it that the specific language in question fails to address your concern? Tell me those things and I can then determine whether my task is to simply construe the language as it appears in our Code, or, instead, whether I must perform independent research in pension manuals, administrative regulations, the IRS Code, or court cases. If you will help me to help you, be assured that the City Attorney's Office can be a valuable resource to call upon when necessary. Please let me hear from you at immediate convenience,



and we'll take a look at this matter together. Thank you. /JimWCHRISTINE PAZ MEMO0001.pdf

THIS MEMORANDUM IS A COMMUNICATION FROM COUNSEL TO AGENTS AND REPRESENTATIVES OF THE CITY OF FORT PIERCE IN AN ATTORNEY/CLIENT RELATIONSHIP AND IS THEREFORE CONFIDENTIAL AND IS FURTHER PROTECTED BY FLORIDA STATUTE SECTION 119.07 AS IT CONTAINS WORK PRODUCT OF THE ATTORNEY PREPARED IN ANTICIPATION OF, OR IN CONNECTION WITH, POTENTIAL OR PENDING ADVERSARIAL ADMINISTRATIVE PROCEEDINGS AND/OR CIVIL LITIGATION.

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

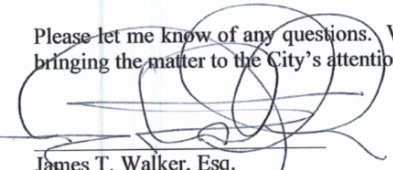
MEMORANDUM

TO: Gloria Johnson, Director, Finance
FROM: James T. Walker, Assistant City Attorney
RE: Robert B. Creswell, Jr.—Pension Retirement Fund
DATE: May 27, 2015



Mr. Robert Creswell, retired, sent me an item of correspondence through letter dated 5/22/15 enclosing a check in the sum of \$1,340.23. This is returned on the basis that it was a mistaken payment, to be reimbursed to the City. It is felt that the letter could have been better addressed to you directly and it is thus forwarded with the check and several other items to your attention.

Please let me know of any questions. We do, of course, wish to thank Mr. Creswell for bringing the matter to the City's attention and acting appropriately.


James T. Walker, Esq.
Assistant City Attorney

JTW:jas
Attachment
cc: Robert V. Schwerer, City Attorney