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Thomas J. Perona  
Chair, Fort Pierce Retirement Board  
City of Fort Pierce  
100 North U.S. Highway One  
Fort Pierce, FL 34950

**RE: Eligibility of Board Member to Remain on Board After Retiring and  
Entering DROP**

Dear Tom:

This memorandum is addressed formally to you and, thru you, the members of our Board. It serves as response to request by the Retirement Board made at its January meeting for an opinion on a question arising out of this scenario: a member of our Board, who serves in his capacity as an elected representative for the Police Department, will soon be retiring and entering the DROP program. Does such Board member remain eligible for continued service on the Board following retirement? In other words, must a member of the Retirement Board necessarily also be a member of the Retirement System? It is to be kept in mind that DROP retirants do not retain "membership" in the Retirement System. See Code sec. 13-40.1(b)(4) ("... Upon a member's election to participate in the DROP, he or she shall cease to be a member and shall no longer accrue any benefits under the retirement system. For all retirement system purposes, the member becomes a retired member."). The short answer to this question is that our Code of Ordinances does not speak clearly to the matter. Nor do the Board's rules of procedure. See Rule 3(b). Or state statute. See Fla. Stat. sec. 112.656. The Board must itself determine how its Code of Ordinances is to be construed.

This uncertainty is seen reflected in Code Section 13-76 (Vacancies), which states in relevant part: “A retirement board **member** provided for in subsections 13-71(2) or (3) who ceases to be a **member** shall be considered to have resigned from the retirement board and the board shall, by resolution, declare the office vacant. ...”. Is this provision triggered when an individual board member ceases to be a member of the retirement system, or just when the person ceases to be a member of the board itself? If the former were intended, one might have expected that language to read, instead, “A retirement board member provided for in subsections 13-71(2) or (3) who ceases to be a member of the retirement system shall be considered to have resigned from the retirement board and the board shall, by resolution, declare the office vacant. ...” But the underscored language does not appear in our Code.

Board eligibility is more specifically described by Code Sec. 13-71. It provides as follows:

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. The board shall consist of the following persons:

- (1) Two (2) **members** of the city commission to be designated by the city commission.
- (2) Two (2) from the general membership, one of these to be elected by members covered by the utilities authority coverage plan and the other to be elected by the members covered by the general coverage plan.
- (3) One **member** to be elected by the members covered by the police officer coverage plan.
- (4) The director of finance.
- (5) A **member** to be designated by the Fort Pierce Utilities Authority.

The elections of members to the retirement board shall be held under such rules and regulations as the Retirement board shall from time to time adopt. (e.s.)

It, too, does not specifically state that the “membership” to which it refers is membership in the retirement system, versus membership on the board. The answer to this question is seen to depend on the meaning or construction given to the word “member”, as used in the highlighted places set out in sec. 13-71. There is no express meaning given by the Code to the word “member” *as used in this context*. In my view, the term may be understood in either of two ways: first, there is the definition given to the word “member” as used in Code section 13-16 (Definitions): “Member means an employee who is a member of the retirement system.” Second, there is a more general meaning to be given to the word, as defined by ordinary usage and common parlance, denoting a person making up one of the constituent elements of the board itself. See ex. **Black’s Law Dictionary** (Rev’d Fourth Ed.), West Pub. Co., pg. 1135: “Member. One of the persons constituting a family... One of the persons constituting a court, a legislative assembly, etc. “ Since there are two such meanings, each different, which might fairly be imparted, that makes the word ambiguous. See ex. *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1230 (Fla 2004). If the word is in fact “ambiguous” it means the Board must itself define the word, in a way that does not violate or obstruct, or restrict the spirit, meaning and clear intent, of the code section in question, when considered in the larger framework of Chapter 13, while doing so in a fashion reasonably consistent with the original intent of those who enacted such provision. see ex. *Calio v. Equitable Life Assur. Soc. Of U.S.*, 169 So.2d 502 (Fla. 3<sup>rd</sup> DCA 1964); see also Code sections 13-71 and 13-76 above. Whatever meaning is found to be most proper here must be applied hereafter, consistently. The Board is not free to arbitrarily change the understanding given, once determined, absent a substantial basis in logic and reason.

So why is the word “member” thought ambiguous, reasonably susceptible to more than one meaning here? I question whether the word “member”, as used in sec. 13-71, was ever originally intended to be constrained by the definition given in sec. 13-16. It is doubted because section 13-16’s definition does not appear to be the same meaning given in sec. 13-71(1) above: “Two (2) members of the city commission to be designated by the city commission.” City Commissioners are not automatically required to be “members of the retirement system”. They must first make specific application before they become members of the system. See Code sec. 13-24(a)(... “Elected officials must file written application for membership with the retirement board.”) Code section 13-71(1) allows a “member of the commission” to be appointed to the board, notwithstanding that the individual commissioner may not have first been made a member of the system itself. Had the Commission intended the word “member”. as used in sec. 13-71, to apply only to individuals who are currently members of the retirement system, then Code Sec.

13-71(1) would presumably have read, instead, something like this: “Two (2) members of the retirement system who serve on the city commission to be designated by the city commission.” But that is not the way this subsection is worded. It tells me, perhaps, that the word was intended in its more expansive sense, to refer to *any* member of the Commission, not just a Commissioner who is also a member of the Retirement System as defined in sec. 13-16. Hence, if that be true of subsection 13-71(1), regarding Commissioners, it should also hold true of subsection 13-71(3), regarding police representatives. In other words, if this thinking is accepted as valid, then it follows that the word “member”, for purposes of sec. 13-71, refers to a person who sits on the Retirement Board (i.e. a member of that board), not necessarily a person who is a formal member of the Retirement System. Under such a construction, the people covered by the police officer coverage plan, are entitled to elect anyone they wish, not just someone who is already part of the Retirement System, and one who is already covered by the system when initially elected, does not thereby lose board membership when no longer covered under the system.

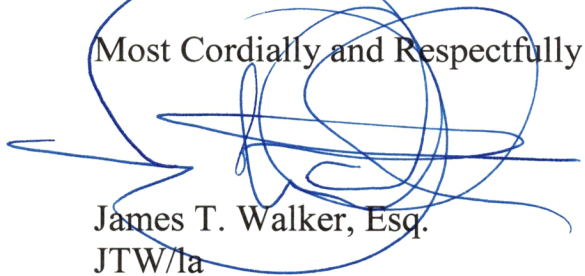
Whether the term “member” is to be read narrowly for purposes of sec. 13-71 to apply only to people who are already members of the retirement system, or more expansively to include anyone, regardless of whether they are “members of the Retirement System”, depends on policy factors to be addressed by our Board Members, in light of those considerations described above. Once the Board makes that decision then, in such case, for purposes of future guidance, it is recommended that the Board authorize or direct me to draft an amendment to the Board’s Rules of Procedure which will henceforth clarify the intended meaning of the word “member” for purposes of Section 13-71 and Section 13-76.

For conflict purposes, it is recommended that our current police representative consider excusing himself from voting on any motion which might result. See Fla. Stat. sec. 112.3143(3)(a) (voting conflicts). As an elected official, he may participate in the discussion leading up to the motion. See Fla. Stat. sec. 112.3143(4).

This opportunity to address the Board’s question was appreciated. Of course I am available to further review any aspect of the matter should the Board find that to be proper.

Thanking you for your attention and consideration, I am and shall ever continue to remain, as always,

Most Cordially and Respectfully Yours,

A handwritten signature in blue ink, appearing to read "James T. Walker, Esq.", is written over the closing text. The signature is highly stylized and somewhat illegible due to overlapping loops and lines.

James T. Walker, Esq.  
JTW/la