



**CYPEN & CYPEN**  
**NEWSLETTER**  
**for**  
**FEBRUARY 16, 2017**

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Never Forget September 11, 2001  
and  
Always Remember May 2, 2011

**1. JACKSONVILLE, FLORIDA, POLICE, FIRE UNIONS REACH TENTATIVE PENSION DEAL:** Florida Public Pension Trustees Association, in its February 2017 edition of Special Pension Clips, reported police and firefighter union leaders recently came to a tentative agreement with Mayor Lenny Curry which paves the way for Jacksonville to become the first major city in America that offers only 401(k)-style

plans to all future employees, and moves closer toward a plan that seeks to pay off the city's \$2.85 billion pension debt. Union members must formally vote on the proposal, while city officials have to run a complex financial analysis, write legislation and brief members of the City Council. And Curry's administration will have to convince the police and fire pension fund board of trustees -- with whom the mayor has publicly traded barbs -- to go along with significant changes to a 2015 pension-reform law. The proposal calls for across-the-board raises to police and firefighters totaling 20% over three years, plus a 3% lump sum payout when deals are inked. Similar, smaller raises and payouts have been proposed for the city's other unions as well. The tentative contracts would also restore more costly pension benefits to police and firefighters who were cut under a reform law passed in 2015 that cut retirement benefits. The 401(k)-style accounts proposed for future public-safety workers are also generous and unlike the kind of benefit often found in the private sector. From day one, the city would contribute 25% of an employee's pay; employees would contribute 10%. And those benefits will be hard to change. City officials agreed to leave them untouched -- and to waive their right under state law unilaterally to impose benefit changes -- for up to 10 years, as long as certain financial benchmarks remain positive for city finances. Keep reading below for another clip.

**2. JACKSONVILLE, FLORIDA, STRIKES HISTORIC, TENTATIVE PENSION ACCORD WITH POLICE, FIRE UNIONS:** Florida Public Pension Trustees Association, in its February 2017 edition of Special Pension Clips, also reported that Jacksonville has struck a deal that

offers long-delayed raises to current employees (a 3% lump sum payout immediately, and a 20% raise for police and fire over three years) and gives all classes of current employees the same benefits. As well, all police and fire officers will have DROP eligibility with an 8.4% annual rate of return and a 3% COLA. The deal, if approved without modification, will bring labor peace through 2027 -- though it can be renegotiated by the city or the unions at 3, 6, 9, and 10 years marks in the agreement. For new employees, however, the plan is historic -- a defined contribution plan that vests three years after the new employee for police and fire is hired. The total contribution: 35%, with the city ponying up 25% of that -- and making guarantees that survivors' benefits and disability benefits would be the same for new hires as the current force of safety officers. Between this and a tentative agreement with AFSCME to put its new hires into defined contribution plans, the city is on a roll when it comes to revolutionizing public pensions. The deal allows the city to stop making the extra payments to the police and fire pension fund that were required by the 2015 pension reform deal. Those payments were slated eventually to rise up to \$32 million a year. As Florida girds up for 2018 elections, and the post-Jeff Atwater as CFO era, expect the quiet whispers about Mayor Curry's statewide future to get louder going forward. Note: Employees of Jacksonville are not currently covered by Social Security.

**3. DISABILITY CLAIMANT FAILED TO CARRY BURDEN OF PROOF THAT IMPAIRMENT WAS DISABLING:** Decovich sued her former employer, Venetian Casino Resort, LLC., alleging that Venetian had

wrongfully denied her long-term disability benefits in violation of the Employee Retirement Income Security Act of 1974. Decovich had stopped working as a dealer in Las Vegas because her fibromyalgia had become disabling. She suffered from headaches, and her hands, knees, shoulders were sore. She was unable to lift anything, and frequently lost her balance. Sometimes, it was impossible for her to open her left eye due to muscle weakness. Finally, she noted she has problems with memory loss. The policy's definition of the terms "disability" or "disabled" depends upon the determination that a significant change in applicant's physical or mental condition due to accidental injury, sickness, mental illness, or substance abuse began on or after the coverage date prevented the claimant from performing, during the benefit qualifying period and the following twelve months, the essential functions of the claimant's regular occupation or of a reasonable employment option offered by the employer, resulting in an inability to earn more than 50% of pre-disability monthly income. "Sickness" is defined as an illness or condition resulting from or caused by any condition, disease or disorder of the mind or body or infection, mental illness or substance abuse or hernia of any type unless it is the immediate result of an accidental injury covered by the plan, or heart disease, pregnancy or complications of any medical treatment for the above stated. The U.S. Federal District Court granted defendant's motion for summary judgment on the pleadings, and denied Decovich contrasting motion. An impairment does not necessarily demonstrate inability to perform essential functions of Decovich's regular occupation in accordance with the policy's definition of disability; that term could instead plausibly indicate Decovich's mere restrained capacity

to complete her work related tasks. Therefore, the Court found, that although Decovich may have had physical difficulty performing her employment as a dealer and suffered from stomach pain and fibromyalgia, the weight of the medical evidence and discussion on record supports the conclusion that Decovich has not surmounted her burden to show that she was disabled, as that term is defined in the plan. *Decovich v. Venetian Casino Resort, LLC.*, Case No. 2:11-CV-872 JCM (CWH) (Dist. Nev. January 26, 2017).

#### **4. GASB PUBLISHES STATEMENT NO. 84 ON GUIDANCE FIDUCIARY ACTIVITY FOR GOVERNMENTAL ENTITIES:**

Governmental Accounting Standards Board of the Financial Accounting Foundation has published Statement No. 84 by the Governmental Accounting Standards Board on fiduciary activities. The objective of this Statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported. The Statement establishes criteria for identifying fiduciary activities of all state and local governments. The focus of the criteria generally is on (1) whether a government is controlling the assets of the fiduciary activity and (2) the beneficiaries with whom a fiduciary relationship exists. Separate criteria are included to identify fiduciary component units and postemployment benefit arrangements that are fiduciary activities. An activity meeting the criteria should be reported in a fiduciary fund in the basic financial statements. Governments with activities meeting the criteria should present a statement of fiduciary net position and a statement of changes in

fiduciary net position. An exception to that requirement is provided for a business-type activity that normally expects to hold custodial assets for three months or less. The Statement describes four fiduciary funds that should be reported, if applicable: (1) pension (and other employee benefit) trust funds, (2) investment trust funds, (3) private-purpose trust funds, and (4) custodial funds. Custodial funds generally should report fiduciary activities that are not held in a trust or equivalent arrangement that meets specific criteria. A fiduciary component unit, when reported in the fiduciary fund financial statements of a primary government, should combine its information with its component units that are fiduciary component units and aggregate that combined information with the primary government's fiduciary funds. The Statement also provides for recognition of a liability to the beneficiaries in a fiduciary fund when an event has occurred that compels the government to disburse fiduciary resources. Events that compel a government to disburse fiduciary resources occur when a demand for the resources has been made or when no further action, approval, or condition is required to be taken or met by the beneficiary to release the assets. The requirements of the Statement are effective for reporting periods beginning after December 15, 2018. (As usual) earlier application is encouraged. To read the entire Statement No. 84 guidelines:

[http://www.gasb.org/jsp/GASB/Document\\_C/GASBDocumentPage?cid=1176168786182&acceptedDisclaimer=true](http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176168786182&acceptedDisclaimer=true). No. 361 (January, 2017).

**5. WATCH WHAT INDEXING DOES FOR PUBLIC PENSIONS:** Some unfunded liabilities of public pensions are out of control across the

country. Illinois is the most severe case, with only 40% of those liabilities funded. According to *Bloomberg*, given the magnitude of the problem, and the political and legal obstacles to fixing it, it remains tempting to underplay the importance of straightforward financial changes that could put the funds on much more solid ground. Worsening the problems of public pension systems nationwide is that they have proved to be poor investors. Standard and Poor's recently released a study showing that about 75% of pension funds' vehicle of choice -- actively managed portfolios -- underperformed their benchmarks. Hundreds of billions of dollars have been poured into wildly expensive hedge funds with little understanding and abysmal results. That move has proved to be a colossal mistake -- one that some states have been trying to rectify in the last few years. Several state pension funds -- including Illinois, Kentucky and Rhode Island -- have slashed their hedge-fund allocations. In 2015, CalPERS announced that it was getting out of hedge-fund investments, and reported unimpressive high-cost private equity performance over 30 years. A fundamental impediment to investment performance is the political nature of public pensions themselves. Lucrative investment management fees often serve as a honeypot. In the pension world, it is not unusual for friends of legislators, political donors and so on to get special treatment. Boards are not constructed to maximize investment expertise, but rather to represent various political constituencies. Trustees usually do not have existing investment knowledge and nearly all have limited time to dedicate to this voluntary service. It is not that unsophisticated pension trustees do too little. It is that they try to do too much. Most pension boards spend too much of their time hiring and firing

investment managers. It turns out that this activity and these managers accomplish little. Pension consultant Wilshire Associates Inc. estimates that less than 5% of pension-investment performance can be attributed to individual investment managers beating benchmarks. Typically, when a pension fund dismisses an investment manager, it moves the money to another active manager. Unfortunately, the new manager may perform no better, and sometimes worse than the one that was fired. The Illinois State Board of Investment avoids that fool's errand; the board has replaced terminated managers with more than \$8 billion of index funds. Indexing gets us market returns at no cost. For that board, it means no new active managers to understand, hire, monitor and potentially fire. Costs have plummeted, and because index funds outperform nearly all active managers, performance should improve. With a much simpler portfolio, it is now easier for the staff to manage and the board to provide oversight. The author is chairman of the Illinois State Board of Investment. Hmmm...

**6. RETIREE BENEFITS -- TALE OF TWO CITIES (STATES):** Some of the workers and retirees around the country who count on having a government pension surely get nervous when they see headlines about the most troubled state and local plans: in places like Illinois, New Jersey, Connecticut, Chicago and Detroit. A broader perspective on retirement benefits, however, according to [squaredawayblog.com](http://squaredawayblog.com), shows that the results are more mixed. A study estimated long-term costs for pensions, retiree health benefits and general debt service as a share of revenues for the 50 states, 178 counties, and 173 cities. Here some

findings:

- States:
  - Many states' combined costs -- pensions, other post-employment benefits such as health insurance and payments on all government bonds -- appear manageable.
  - More worrisome are the eight states with the highest combined costs: Illinois, New Jersey, Connecticut, Hawaii, Kentucky, Massachusetts, Rhode Island, and Delaware. [States with high pension burdens also tend to have high costs for retiree health benefits].
- Counties:
  - The combined costs are also manageable for many of the counties analyzed.
  - But California, with its system of large county governments, has six of the seven U.S. counties with the most burdensome long-term costs; the other is Cook County, surrounding Chicago.
- Cities:
  - Like states and counties, the picture overall is a mix of a handful of deeply troubled jurisdictions and many where the costs appear manageable.
  - The eight major cities with the highest total cost burdens range from the predictable -- Chicago and Detroit -- to surprises such as

Wichita, Kansas, and Portland, Oregon.

Make no mistake: the state and local governments with the largest cost burdens face enormous challenges and unpleasant solutions. But the general situation is not nearly as dire as the worst headlines indicate. That is for sure.

**7. FEDERAL APPELLATE COURT DENIES REVIEW OF  
TEMPORARY RESTRAINING ORDER AGAINST ENFORCEMENT OF  
PRESIDENTIAL EXECUTIVE ORDER REGARDING IMMIGRATION:**

The states of Washington and Minnesota filed suit challenging the President's Executive Order 13769, which, among other changes to immigration policies and procedures, bans for 90 days entry into the United States of individuals from seven countries, suspends for 120 days the United States Refugee Admissions Program and suspends indefinitely the entry of all Syrian refugees. In an emergency proceeding, the Government moved for an emergency stay of the district court's temporary restraining order while its appeal of that order proceeds. The court noted the extraordinary circumstances of the case, and determined that the district court's order possesses qualities of an appealable preliminary injunction. The court held that the states have made a sufficient showing to support standing, at least at this preliminary stage of the proceedings, where they argued that the Executive Order causes a concrete and particularized injury to their public universities, which the parties do not dispute are branches of the states under state law. The court concluded that there is no precedent to support the Government's

position that the President's decisions about immigration policy, particularly when motivated by national security concerns, are unreviewable, even if those actions potentially contravene constitutional rights and protections. The court explained that the Government's claim runs contrary to the fundamental structure of our constitutional democracy. Therefore, although courts owe considerable deference to the President's policy determinations with respect to immigration and national security, it is beyond question that the federal judiciary retains authority to adjudicate constitutional challenges to executive action. The court concluded that the Government had not shown that it is likely to succeed on the merits regarding its argument about, at least, the States' Due Process Clause claim, and the court noted the serious nature of the allegations the states have raised with respect to their religious discrimination claims. The court held that the procedural protections provided by the Fifth Amendment's Due Process Clause are not limited to citizens; rather, they apply to all persons within the United States, including aliens, regardless of whether their presence here is lawful, unlawful, temporary or permanent. Finally, the balance of hardships and the public interest do not favor a stay. Accordingly, the court denied the emergency motion for a stay pending appeal. The above summary was derived from *Justia. State of Washington v. Trump*, Case No. 17-35105, (U.S. 9<sup>th</sup> Cir. February 9, 2017).

**8. ARE SOCIAL SECURITY BENEFITS TAXABLE?:** According to the Internal Revenue Service, if taxpayers receive Social Security benefits, they may have to pay federal income tax on part of those benefits. These

IRS tips will help taxpayers determine if they need to do so.

- Form SSA-1099. If taxpayers received Social Security benefits in 2016, they should receive a Form SSA-1099, Social Security Benefit Statement, showing the amount of their benefits.
- Only Social Security. If Social Security was a taxpayer's only income in 2016, their benefits may not be taxable. They also may not need to file a federal income tax return. If they get income from other sources, they may have to pay taxes on some of their benefits.
- Free File. Taxpayers may use IRS Free File to prepare and e-file their tax returns for free. If they earned \$64,000 or less, they can use brand-name software. The software does the math for them, which helps avoid mistakes. If taxpayers earned more, they can use Free File Fillable Forms. This option uses electronic versions of IRS paper forms. It is best for people who are used to doing their own taxes. Free File is available only by going to [IRS.gov/freefile](https://www.irs.gov/freefile).
- Interactive Tax Tools. Taxpayers can get answers to their tax questions with this helpful tool, Are My Social Security or Railroad Retirement Tier I Benefits Taxable, to see if any of their benefits are taxable. They can also visit [IRS.gov](https://www.irs.gov) and use the Interactive Tax Assistant tool.
- Tax Formula. Here is a quick way to find out if a taxpayer must pay taxes on their Social Security benefits: Add one-half of the Social Security income to all other income, including tax-exempt interest. Then compare that amount to the base amount for their filing

status. If the total is more than the base amount, some of their benefits may be taxable.

- Base Amounts. The three base amounts are:
- \$25,000 – if taxpayers are single, head of household, qualifying widow or widower with a dependent child or married filing separately and lived apart from their spouse for all of 2016 \$32,000 -- if they are married filing jointly
- \$0 -- if they are married filing separately and lived with their spouse at any time during the year.

## **9. WHEN IS A GOOD TIME TO START RECEIVING SOCIAL**

**SECURITY BENEFITS?:** For over 80 years, the Social Security Administration has been helping people realize those dreams, assisting people through life's journey with a variety of benefits. It is up to you as to when you can start retirement benefits. You could start them a little earlier or wait until your "full retirement age." There are benefits to either decision, pun intended. Full retirement age refers to the age when a person can receive their Social Security benefits without any reduction, even if they are still working part or full time. In other words, you do not actually need to stop working to get your full benefits. For people who attain age 62 in 2017 (those born between January 2, 1955 and January 1, 1956), full retirement age is 66 and two months. Full retirement age was age 65 for many years. However, due to a law passed by Congress in 1983, it has been gradually increasing, beginning with people born in 1938 or later, until it reaches 67 for people born after 1959. You can start receiving Social Security benefits as early as age 62 or any time after

that. The longer you wait, the higher your monthly benefit will be, although it stops increasing at age 70. Your monthly benefits will be reduced permanently if you start them any time before your full retirement age. For example, if you start receiving benefits in 2017 at age 62, your monthly benefit amount will be reduced permanently by about 26%. On the other hand, if you wait to start receiving your benefits until after your full retirement age, then your monthly benefit will be higher. The amount of this increase is two-thirds of one percent for each month - - or eight percent for each year -- that you delay receiving them until you reach age 70. The choices you make may affect any benefit your spouse or children can receive on your record, too. If you receive benefits early, it may reduce their potential benefit, as well as yours. If you decide to receive benefits before you reach full retirement age, you should also understand how continuing to work can affect your benefits. Social Security may withhold or reduce your benefits if your annual earnings exceed a certain amount. However, for every month benefits are withheld, it increases your future benefits. That is because at your full retirement age Social Security will recalculate your benefit amount to give you credit for the months in which benefits were reduced or withheld due to your excess earnings. In effect, it is as if you had not filed for those months.

**10. NEW OFFICE ADDRESS:** Please note that Cypen & Cypen has a new office address: Cypen & Cypen, 975 Arthur Godfrey Road, Suite 500, Miami Beach, Florida 33140. All other contact information remains the same.

**11. CRAZY STATE LAWS:** *Good Housekeeping* reminds us that there are crazy laws in every state. In California, plastic bags are banned. San Jose and Sunnyvale decided to go green in 2012, when plastic bags were banned at both small and large retailers due to their environmental impact.

**12. ZEN PROVEN TEACHINGS TO LIVE BY:** Generally speaking, you are not learning much when your lips are moving.

**13. PONDERISMS:** Why are you IN a movie, but you are ON TV?

**14. TODAY IN HISTORY:** In 1913, President Taft agrees not to intervene in Mexico.

**15. KEEP THOSE CARDS AND LETTERS COMING:** Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

**16. PLEASE SHARE OUR NEWSLETTER:** Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be

interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

**17. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.**