

LAW OFFICES OF
KEVIN S. DOTY, P.A.

Attorney at Law

FLORIDA SUPREME COURT CERTIFIED
COUNTY, CIRCUIT AND APPELLATE COURT MEDIATOR
QUALIFIED ARBITRATOR

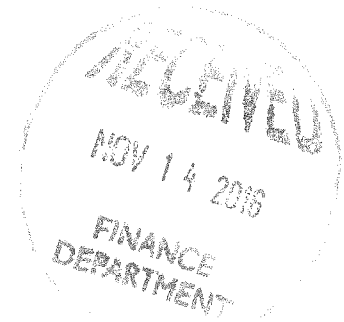
PLEASE REPLY TO VERO BEACH

KEVIN S. DOTY, ESQ.
411 Holly Road
VERO BEACH, FL 32963
TELEPHONE: 772-234-9990
FACSIMILE: 772-234-9992
EMAIL: Kevindoty@law.aol.com

2300 6th Avenue North
St. Petersburg, FL 33713

November 9, 2016

Ms. Johnna S. Morris
Director of Finance/Secretary-Treasurer
City of Fort Pierce Retirement and Benefit System
City of Fort Pierce
Post Office Box 1480
Fort Pierce, Florida 34954



Re: Robert Creswell

Dear Ms. Morris:

As you will recall, Mr. Creswell's retirement was approved during the August 18, 2016 meeting of the Board of Trustees of the City of Fort Pierce Retirement and Benefit System. Mr. Creswell timely requested a rehearing via letter dated August 30, 2016. That request remains pending. The Board's attorney, James Walker, Esq, suggested that I send this letter in advance of the requested hearing. This letter should not be construed as a waiver of Mr. Creswell's right to a hearing if this letter does not result in the satisfactory resolution of Mr. Creswell's issues.

For at least three very good reasons, my client should prevail in this matter. As mentioned in my August 30, 2016 letter to you, Mr. Creswell is entitled to credit for additional years of service for retirement purposes under Florida law based on his involuntary call to active duty with the United States Army. Mr. Creswell is entitled to credit for the years he spent on active duty and, thus, his retirement benefit needs to be recalculated. The board's reliance on a City of Fort Pierce ordinance to deny Mr. Creswell's credit for the time spent on active duty is misplaced for several reasons. Not only is the City of Fort Pierce Ordinance #13-27 contrary to Florida Statutes, it does not apply to Mr. Creswell or similarly situated employees. And, perhaps, unique to Mr. Creswell, his 2009 appeal to the Civil Service Appeals Board and the 2009

Ms. Johnna S. Morris
November 9, 2016
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settlement with the City, mandate my client's increased retirement benefits.

Municipal ordinances may not impose restrictions on matters set forth in state statutes. Attorney Walker will confirm that statement. Chapter 115, Florida Statutes, is applicable in this case. Section 115.12, Florida Statutes provides that "...the period of active military services shall, for purposes of computation to determine whether such person may be entitled to retirement under the laws of the states be deemed continuous..." (emphasis added). Section 115.14, Florida statutes, makes the above referenced statute applicable to employees such as Mr. Creswell. By its clear reading, Section 115.12 renders the City's Ordinances (13-27) unapplicable and/or unenforceable to my client. That is particularly true of 13-27(4). Simply stated, Section 115.12, Florida Statutes, overrides 13-27.

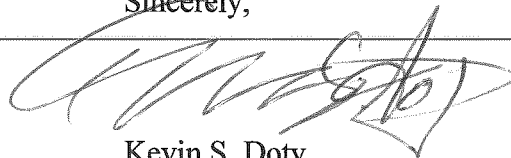
Even if Section 115.12, Florida Statutes did not render 13-27(4) unenforceable, it does not apply to my client. Mr. Creswell did not leave the employ of the City of Fort Pierce when he was on active duty. In fact, his pay was supplemented and he continued to receive insurance benefits and, he continued to pay taxes on his income. Additionally, Mr. Creswell continued to contribute money into the retirement system while he was on active duty. That was not a mistake as alleged. It was in keeping with the settlement recorded with City Manager, David Recor.

During 2008, the City of Fort Pierce threatened Mr. Creswell with a lay-off when he was on active duty. When it was brought to the attention of the City that any such termination of employment would be unlawful, the City relented and agreed to supplement Mr. Creswell and more importantly, reinstate him for retirement purposes. The pertinent documents should be found in Mr. Creswell's personnel file, but for your review, I enclose a copy of my letter to City Attorney, Steven McCain, Esq., dated May 14, 2009, City Manager, David Recor letter dated July 13, 2009, and a memo dated September 29, 2009 from Mazella Smith to David Recor. As a specific condition of dropping his appeal to the Civil Service Appeals Board (appeal of threatened termination). The City agreed to reinstate Mr. Creswell, supplement his pay and preserve/reinstate him for retirement purposes.

For the reasons stated, Mr. Creswell is entitled to retirement credit for the time he spent serving this Country as a soldier in the United States Army. Please re-calculate his retirement pay.

If a hearing on this matter is required, I ask that it be scheduled in January, 2017. Thank you for your attention to this request.

Sincerely,



Kevin S. Doty

KSD/lfh
Enclosures
Cc: James Walker, Esq. (w/enclosures)
Client (w/enclosures)

LAW OFFICES OF

KEVIN S. DOTY, P.A.

Kevin S. Doty, Esq.
Certified Circuit Court Mediator

947 20th Place
Vero Beach, FL 32960

Phone: (772) 299-6301
Facsimile: (772) 299-6310
Email: kevindotylaw@aol.com

May 14, 2009

Via: Facsimile Only: 1-772-466-5492

Steven R. McCain, Esquire
Office of the City Attorney
City Hall, 100 North U.S. 1
P.O. Box 1480
Fort Pierce, Florida 34954-1480

Re: Appeal of Robert B. Creswell to Civil Service Appeals Board

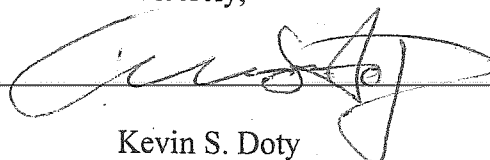
Dear Steven:

I am pleased to advise you that after discussing your most recent letter and the proposed letter from City Manager, Mr. Recor, we have an agreement. My client will dismiss the pending appeal upon completion or fulfillment of the anticipated requirements and upon receipt of his check. This acceptance is conditioned expressly upon our understanding that in addition to the matters contained in the letter from Mr. Recor, the reinstatement of Mr. Creswell upon his return from active duty will result in no break in his employment with the City for purposes of his retirement, advancement and etc.

I am not sure what you want in the way of documentation. I will be pleased to allow you to prepare whatever documentation you would ask Mr. Creswell to sign.

Thank you for your continued cooperation and professional courtesies. I am very glad we were able to resolve this amicably. Thank you for your attention to these matters.

Sincerely,

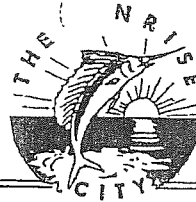


Kevin S. Doty

KSD/lfh

cc: Mr. Robert B. Creswell (via: email only)

CITY OF FORT PIERCE *Florida*



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

TEL (772) 460-2200
FAX (772) 489-4142
www.cityoffortpierce.com

July 13, 2009

JUL 17 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
- Kevin S. Doty, Esquire, Attorney for R. Creswell



INTEROFFICE MEMORANDUM
From the office of the
Administrative Services /HR Director

TO: David L. Recor, City Manager

FROM: Mazella D. Smith, Administrative Services Director *MDS*

RE: **ROBERT CRESWELL SUPPLEMENTAL PAY**

DATE: September 29, 2009

As per your letter to Mr. Creswell dated July 13, 2009, below are the calculations for the difference in his supplemental pay for 2008 and 2009.

Mr. Creswell Monthly Salary with the City is \$4,927.87

Military Monthly Salary for Oct. Nov. & Dec 2008 was \$2,877.90

City \$4,927.87
Military -\$2,877.90
\$2,049.97 x 3 months = \$6,149.91 (owed)

Military Monthly Salary for Jan. - Sept. 2009 is \$4,521.20

City \$4,927.87
Military -\$4,521.20
\$ 406.67 x 9 months = \$3,660.03 (owed)

Based on the above calculations the City owes Mr. Creswell a total of \$9,809.94. It would be beneficial if the Finance Director would verify these numbers prior to payment.

Attached is Mr. Creswell's letter to the City dated August 10, 2009 with instructions to direct deposit the funds with Wachovia and re-establish his retirement and health benefits.

After your review and approval please forward same documentation to Finance so that the payment process can be initiated.

MDS/cl
 Attachments

cc: Robert V. Schwerer, City Attorney (w/a)
 Gloria Johnson, Finance Director (w/a)
 Robert Creswell (w/a)
 Kevin Doty, Esq. (w/a)
 Steve McCain, Esq. (w/a)
 Gena L. Spivey, HR Generalist (w/a)

Routed to LP
 For Filing
 For Follow Up
 KSD

See for email to Mr. Creswell

Robert B. Crosswell, Jr.
1402 Nebraska Avenue
Unit 3-B
Fort Pierce, Florida 34950
(772) 201-7437

RECEIVED
AUG 10 2009
ADMINISTRATIVE
CITY OF FT. PIERCE

Via Hand Delivery

August 10, 2009

Ms. Mazella D. Smith
Administrative Services Director
City of Fort Pierce
100 North U.S. Highway One
Fort Pierce, Florida 34950

Re: Reinstatement from Military Service / Civil Service Appeal

Dear Ms. Smith:

Further to the correspondence from David L. Recor, City Manager, dated July 13, 2009, this will serve as my written notice of intent to return to the City of Fort Pierce.

I had previously furnished the City of Fort Pierce with a copy of my Military Orders showing an end date of September 13, 2009, which should be located in my personnel file. Enclosed, please find a copy of an amendment to those Orders showing that same have been extended through September 13, 2010.

Therefore, it is my intent to return to my employ with the City of Fort Pierce on Monday, October 4, 2010. In the event that the U.S. Army decides to shorten the end date of my Orders, I will inform you accordingly, giving an updated return date.

As of the date of this correspondence, I have not received the supplemental pay from the City retroactive to the last payment I received from the City. This needs to occur immediately. Additionally, the ongoing supplement must be set up to be paid on the City's two (2) week pay schedule. I had furnished your office with my Military Pay Scale information on several occasions; however, enclosed is another copy of same for your convenience. Also enclosed is a copy of the direct deposit directive which I have completed with the City's Finance Department.

Further, in order to preserve my retirement account throughout the appeal, I had put the account on a deferred status so as to not lose the tax benefits or so the account would not be distributed. I have this same date spoken with the Finance Department regarding the account.

Finally, my health, dental, and prescription benefits with the City need to be reinstated as soon as possible. I am entitled to these benefits and am in need of same.

Ms. Mazella D. Smith
August 10, 2009
Page 2

As I am hand delivering this correspondence to you, hopefully you will have the time to speak with me in person regarding the contents hereof. However, should you have any questions, please do not hesitate to contact me or Kevin S. Doty, my attorney.

Sincerely,



Robert B. Creswell, Jr.

RBC:ms

Enclosures: As Stated

cc: Kevin S. Doty, Esquire
David L. Recor, City Manager
Robert V. Schwerer, City Attorney
Spencer Gilbert, Esquire
Steve DiPalma, CSAB Chairman
Harold Hopkins, Solid Waste Director