

The Move From the Funding Dispute to the Reduction of Benefits Battle

Presentation By:

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ATTORNEYS AT LAW

Who Am I and How Did I Get Into This World of Firefighter Pensions?



- ◆ What I am and what I am not....



Who Am I and How Did I Get Into This World of Firefighter Pensions?



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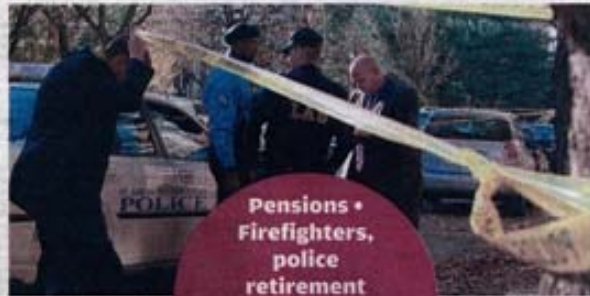
OTHER VIEWS

MORE LETTERS ONLINE

"No nation, state or culture ever has survived unfettered and uncontrolled immigration," writes Steve Ojden of St. Louis. "It is the duty of the federal government to secure our borders, but it has failed to do so. The Arizona law attempts to do at the state level what the federal government has failed to do."

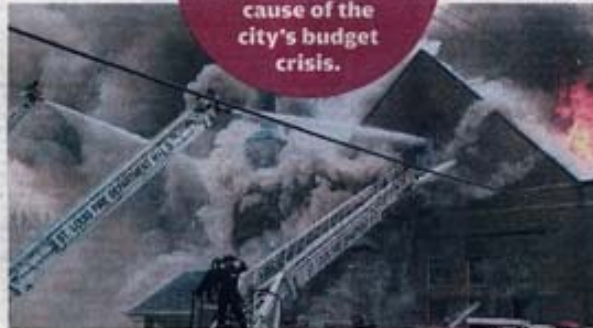
Read and talk about this letter and more letters online at STLtoday.com/letters

St. Louis should keep its promises



Christian Gooden
Post-Dispatch

Pensions •
Firefighters,
police
retirement
pay is NOT the
cause of the
city's budget
crisis.



Laurie Skrivan • Post-Dispatch

Who Am I and How Did I Get Into This World of Firefighter Pensions?



BY DANIEL G. TOBLEN

Politicians in St. Louis city government appear to be in denial about the causes of police and firefighters' pension funding issues. Contrary to what city officials have been promoting in the news media, the allegedly generous benefits provided for in the St. Louis police and firefighter pensions are not causing the city's budget problems.

In much of the news coverage, the city is presented as if it voluntarily passed a \$140 million bond issue and then asked the citizens of St. Louis to raise their sales tax to maintain the pension funds after a prior market downturn.

The truth is that in 2007 the city was ordered by the Missouri Supreme Court to fully fund police and firefighter pensions in accordance with applicable state laws and city ordinances. That court decision caused the most recent bond issue. The sales tax increase was necessary, in large part, to create a revenue stream to pay off these bonds.

The lawsuits were filed in 2003 by the Firemen's Retirement System and the Police Retirement System. The trial court, the court of appeals and Missouri Supreme Court (11 judges in all) ruled unanimously against the city, which would seem to reflect negatively upon the wisdom of the city's decision to underfund these retirement systems during a time of relative prosperity.

In addition, the city spent very large sums on legal fees and countless hours in court attempting to justify its bad decision to cut its contribution to the pension funds, using the money required to fund pensions to pay for pet projects that the city

found more attractive or politically expedient. Had the city just paid what it owed, millions of tax dollars could have been saved.

The Supreme Court noted that full funding by the city may create the need for some difficult budgeting decisions, but that didn't create a legal or constitutional issue. Consider what would happen if the city decided to stiff its bondholders. That is the more appropriate analogy to the city's position with respect to funding its public pensions than those positions advocated by city officials.

Would you take a low-paid, dangerous job if you were not offered the incentive of a guaranteed pension with strong disability benefits?

All of the city's legal posturing resulted in the Supreme Court's holding that these retirement benefits and their full funding are guaranteed by state law and ordinances and any reduction of existing retirees' benefits is probably unconstitutional. A promise made must be a promise kept.

This is not about new benefits for fire and police personnel; it is about paying for existing benefits. In fact, no new pension-related benefits have been granted since 2003.

Police officers and firefighters provide the most fundamental service a city can provide. They keep you safe. A stable public safety

pension fund is one of the most important considerations in recruiting new members of the police and fire departments. These brave men and women put themselves in harm's way every day to protect city residents, businesses and organizations. In return, they ask for a reasonable pension when they are too old to do the intense physical work their job entails or when they are seriously injured on the job.

Firefighters and police officers do not qualify for Social Security because they have a government pension, so their pensions are all that they have when they retire. Firefighters have no health care coverage when they leave the job. They can stay in a city-sponsored program, but it costs more than \$1,430 per month, which eats up much of the average firefighter's pension. Since firefighters usually retire in their mid- to late 50s, they struggle with health care costs until they are eligible for Medicare.

One can imagine how important a stable pension must be to a young recruit before making a decision to join the city's police or fire department. Would you take a low-paid, dangerous job if you were not offered the incentive of a guaranteed pension with strong disability benefits?

The city's budget crisis was not caused by public safety pensions.

And it is fundamentally important that the city continue to be served by dedicated police officers and firefighters who serve honorably and with distinction.

Daniel G. Toblen is a partner and the head of litigation at Danna McKittrick, P.C. He represents The Firemen's Retirement System of St. Louis as outside legal and trial counsel.

Who Am I and How Did I Get Into This World of Firefighter Pensions?



- ◆ Danna McKitrick – The other parts of the puzzle



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What is Going on in the World of Public Pensions?



◆ Nationally, in Missouri, and in my practice.

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ST. LOUIS POST-DISPATCH PLATFORM

I know that my retirement will make no difference in its cardinal principles, that it will always fight for progress and reform, never tolerate injustice or corruption, always fight demagogues of all parties, never belong to any party, always oppose privileged classes and public plunderers, never lack sympathy with the poor, always remain devoted to the public welfare, never be satisfied with merely printing news, always be drastically independent, never be afraid to attack wrong, whether by predatory plutocracy or predatory poverty. • JOSEPH PULITZER • APRIL 10, 1907

MATSON'S VIEW

NEW ST. LOUIS FLAG



The World has Changed – The “Gratuity Theory” of Pensions



- ◆ No pensions
- ◆ Pensions as gratuities
- ◆ Pensions as exceptions to general rule that no public money can be spent for private purposes
- ◆ Pensions as a matter of right

Know What's Happening



- ◆ Each group needs to have someone who understands at least the basics of the actuarial reports (usually a trustee with at least two years' experience).

What Does Your Attorney Know?



- ◆ Make sure your attorney understands actuarial reports and how the plan is being administered.
- ◆ City attorneys may have a conflict of interest.
- ◆ Labor lawyers may not understand public pensions.

The Starting Point – Know What is in Your Pension Ordinances



- ◆ Do this NOW, if you haven't already.
- ◆ Many things we will talk about later depend on this.
- ◆ Know your other plan-related documents (SPD and policies and procedures).

Motivators Regarding Plan Review:



- ◆ Threats of benefit reduction.
- ◆ Proper funding each year; the problems of severe underfunding (the "UAAL").
- ◆ Task forces – never take them at face value, but do participate.
- ◆ IRS compliance. (Determination letter)
- ◆ Do you know what you have – pluses and minuses; how clear is the language?

ST. LOUIS POST-DISPATCH

Suit filed over firefighters' sick leave

BY DAVID HUNN • dhunn@post-dispatch.com > 314-436-2239

ST. LOUIS • The trustees of the Firemen's Retirement System of St. Louis sued the city Wednesday over cuts to firefighter sick leave.

The suit argues that laws passed last month by the city to limit the accumulation of sick leave contradict state law.

This summer, the city moved to change laws that allowed city employees, including firefighters, to cash out half their accumulated sick days when they retire and use the other half to build up years of service and final pay, which would boost their retirement payouts.

City administrators said Wednesday that the change could save more than \$1.8 million a year, far more than earlier estimates.

But Dan Tobben, attorney for the system, said that state law prohibits caps on accumulated

sick leave for current firefighters. The city can't change firefighter benefits without first getting a change in state law, he said.

In addition, the suit says that the city can't take away any previously hired firefighter's individual retirement benefits at all, regardless of any change to state law.

The move comes as city leaders say firefighter pensions are ballooning, rising by \$5.9 million this year alone. They've been meeting with firefighter representatives for weeks to negotiate pay cuts, pension changes and layoffs, likely to come soon.

Vicky Grass, executive director of the firefighter retirement system, said in a statement that the city is unfairly singling out firefighters in its attempts to fix an unbalanced budget.

"Surely, the mayor does not believe that the firefighters or their pensions are bankrupting the city," she said. "The men and women of the fire department are among the hardest-working employees in the city and to balance the budget on the backs of firefighters, retirees and their families is not only unfair, it is wrong."

Jeff Rainford, chief of staff for Mayor Francis Slay, said city pensions cost \$6 million a year 10 years ago. This year, they'll cost \$75 million, and if nothing changes, they'll nearly reach \$100 million in two more years.

"If costs continue to rise as they have in the past, we won't have a fire department, we'll just have a fire pension," he said. "At some point, someone has to stand up for the taxpayers."

Social Security Vs. No Social Security



◆ **BIG DEAL**

◆ Legal significance

◆ Public relations significance

◆ The "fairness" argument

◆ Political – things may change here
as well

New Employees - No Guarantees



- ◆ No promises made therefore no expectations
- ◆ Government unit has great flexibility regarding new employees
- ◆ Move to a new tier / multiple tiers
- ◆ Move to LAGERS

Retirees - Benefits Can't be Changed Under Missouri Law, But:



- ◆ Lawsuit in Springfield regarding COLA
- ◆ The very recent Colorado trial court decision regarding COLA
- ◆ Other challenges in other states

The Battle Ground is Regarding Active Firefighters



- ◆ Right to receive all that has been promised vs. right to keep all that you have earned to date.
- ◆ The Constitutional Guarantee – State and Federal (The Contracts Clause)

The guarantee only protects what you have; it doesn't create additional contractual rights. (Read your plan.)

The Battle Ground is Regarding Active Firefighters



- ◆ Governmental entity cannot impair the rights under a contract (state and federal)
 - The federal history
 - Dire circumstances exception (Great Depression and WWII – not a severe recessions or an “AA” credit rating for the U.S.)
 - Only as long as required by the emergency

The Battle Ground is Regarding Active Firefighters



- ◆ What does this mean in different contexts in Missouri?
 - Transfer to a new plan (LAGERS) – not as simple for the governmental entity as they believe
 - If value of benefit isn't equal or greater, liability to the firefighter on the part of the City, if there is a transfer
 - LAGERS seems to provide a mechanism for changing (reducing) benefits

The Battle Ground is Regarding Active Firefighters



- ◆ “Definitely Determinable Benefits” -- an IRS requirement that may also afford protections
- ◆ Federal interests in the solvency of public pensions (no bailouts)
- ◆ IRS regulation is the backdoor – remember Al Capone?

Things to Think About



- ◆ Money paid into the pension – no longer the City's or FPD's money (but read what the plan says) – **a big deal!**
- ◆ The bankruptcy threats – serious, but...
What has really happened to date?
 - Pension benefits have almost never been reduced.
 - But see Pritchard, Alabama, and perhaps now Central Falls, Rhode Island.

Things to Think About



- ◆ City's Taxing Authority vs. the City's ability to pass a tax increase
- ◆ Public Safety may be different (St. Louis and Springfield).
 - The voters may like you and the police more than the elected officials.

Going Forward



- ◆ Where do we go from here?
- ◆ Core vs. non-core benefits
- ◆ Is there a difference between cutting core and non-core benefits?
 - The Colorado trial court decision and other pending lawsuits.
 - Is a requirement to have firefighters contribute more from their paychecks a violation of the Contract Clause?

Going Forward



- ◆ Is your city or FPD administration friendly, hostile or neutral?
- ◆ What is your political reality? What would the voters do, if push came to shove?
- ◆ Do you have a P.R. consultant?
- ◆ What is going on politically, socially and economically in your communities?

The National Media Story



- ◆ The current job security envy and ongoing “pension envy.”
- ◆ When the economy improves, envy of job security may disappear.
- ◆ Pension envy will almost surely remain.
- ◆ Hard to explain someone in their mid-40’s getting a pension check.

The National Media Story



- ◆ Public safety is different.
 - Many don't receive Social Security.
 - Citizens don't want 60-year-old police officers and firefighters.
 - Gap in healthcare coverage upon retirement before Medicare eligibility.
 - However, usually firefighters are held in high regard (often better than police officers).

Fighting to Preserve Your Pension Benefits



- ◆ The battle can be won.
- ◆ The funding battles have largely been won.
- ◆ Make sure you are ready.
 - Know your plan.
 - Know your politics.
 - Have a good attorney.
 - Consider a PR professional or media advisor.

Thank you for your attention!



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[http://www.dannamckitrick.com/Documents/Firefighters
Pension_Convention_presentation_Daniel_Tobben.pdf](http://www.dannamckitrick.com/Documents/Firefighters_Pension_Convention_presentation_Daniel_Tobben.pdf)

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