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Missouri Supreme Court Decides in Favor of City Firefighters Pension Plan Funding

Jefferson City, MO – March 13, 2007 – Missouri's Supreme Court today ruled in favor of the Firemen's Retirement System of St. Louis (FRS) in a lawsuit requiring the City of St. Louis to fully fund FRS, based on the amounts calculated by its actuary. In the same Opinion, the Court also ruled in favor of the Police Retirement System (PRS).

The ruling is the culmination of a suit, originally filed in 2003, in which a St. Louis City Circuit Court judge ruled that the City had breached its obligation to pay \$18.5 million into the firemen's pension fund for fiscal years 2004 and 2005.

"FRS filed the suit to enforce the law in order to guarantee promised benefits for the firefighters of the City of St. Louis and their families, and for retired firefighters and their widows," said Dan Tobben, an attorney with Clayton, Missouri-based law firm Danna McKittrick, P.C.

The City filed an appeal of the initial ruling citing provisions of the Hancock Amendment to the Missouri Constitution, as well as other constitutional provisions. A lower court had previously noted that the City's position was unreasonable, stating: "To follow the City's logic, it could evade almost any debt by failing to timely appropriate money for it in the fiscal year when due, and then claim that it cannot be forced to pay it in succeeding years." The Supreme Court agreed, holding: "The City cannot evade its responsibilities to the PRS and FRS by refusing to pay them the amounts required and then arguing it has spent the monies elsewhere."

Much of the Missouri Supreme Court's decision dealt with whether Hancock Amendment to the State of Missouri's constitution applied (it does not) and on the definition of the word "shall" and whether it is mandatory or permissive according to the law. In essence, the Court said that "shall" has its normal meaning and the laws mean what they say.

The statutes and ordinances relating to the PRS and the FRS, when taken as a whole, support the view that actuarial soundness is the principle at the heart of the PRS and the FRS funding provisions. Actuarial soundness requires the City to make its annual contribution of the actuarially-determined amounts certified by the PRS and the FRS boards of trustees.

Regarding the Hancock Amendment, the Court held that “where there is no mandate that the City take on a new responsibility, but only a continued responsibility for it to fund an existing activity according to a previously existing formula, there is no Hancock violation.” The City did not challenge the accuracy of the actuaries’ calculations or the accuracy of the amount certified by the trustees as the amount to be contributed.

“The firefighter’s pension is critical to the men and women who put their lives on the line to protect the people who live in the City of St. Louis. For many of the firefighters, the pension is all they will have when they retire because most are not eligible for Social Security benefits. Unlike private pensions under ERISA, City firefighters’ pensions are not insured by the federal government. To fail to adequately fund their pension is unconscionable considering these men and women spent their lives protecting the City, its residents and businesses, and their property,” said Tobben who argued for the FRS before the Supreme Court, and who has represented FRS throughout this litigation.

Tobben noted that the failure to fund public employee pension funds is threatening the prospects of municipal and public employees in Missouri and nationwide. Increasing demands on municipal and state governments result in those bodies searching for alternative sources of funds to cover ongoing operations and programs.

“To some cash-strapped government entities, the public employee pension fund may look like tempting, low-hanging fruit. They may see that pension funds are accumulating large sums of money and think they can reduce annual contributions without any harm. The reality is that funding retirement systems is a legal obligation the government has to its workers,” Tobben said.

He noted that the failure to properly fund pensions now will result in tremendous sums needing to be paid by government entities in the future, if benefits are to be paid as promised.

States such as Illinois and New Jersey also are looking for ways to meet their obligations. *The New York Times* has reported that New Jersey is facing an estimated \$18 billion in unfunded pension obligations and that Illinois is stretching its funding obligations over 50 years instead of the customary 30 years. Public officials are being sued and there have been criminal investigations in San Diego for concealing underfunding of city pensions.

“Government cannot continue to treat its employee pension fund obligations like matters subject to discretionary funding. Employees who qualify for a pension deserve better than that,” Tobben said. “The City knew, or should have known, it was obligated to fully fund its pensions. This ruling would not have been necessary if the City had continued to meet its obligation to contribute to the pension funds rather than provoking this litigation.”

About Danna McKitrick: Located in Clayton, Missouri, Danna McKitrick, P.C. delivers outstanding legal representation to businesses (emerging to national), insurers, and individuals throughout the Midwestern region. The firm is on the Web at www.dannamckitrick.com. (Press photo of Mr Tobben is available at the website).

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