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FOR IMMEDIATE RELEASE

Joplin Police and Firemen's Pension Fund Trustees May Sue City

Joplin, Mo., Nov. 14, 2007 . . . An attorney told trustees of the Joplin Police and Firemen's Pension Fund today that they may have a duty to file suit against the city, its mayor and the city council members if the city fails to take immediate action to properly fund the pension plan.

Dan Tobben, an attorney with Danna McKitrick, P.C., a St. Louis-based law firm hired by the trustees to advise them on the pension funding situation in Joplin, said the trustees, as well as the members of the City Council have fiduciary responsibilities to see that the pension plan is properly funded.

"If Joplin fails to quickly reach agreement to appropriately fund (the plan), it is our opinion that the Plan Trustees have a fiduciary duty to file suit to seek judgment against Joplin for money damages, declaratory relief and injunctive relief," Tobben said.

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Joplin faces lawsuit

First of Three Adds

In delivering the formal Report and Legal Opinion, Tobben outlined several areas where the city must take action to avoid being sued, as well as action against the City by the State of Missouri. Some of the points made in the report include:

- The plan's benefits are established in a defined benefit (DB) format, however, the funding mechanism is a flat percentage rate set by ordinance, which is more similar to defined contribution (DC) funding. Because the City has been paying a flat percentage of payroll, rather than the amount the actuary says is necessary, the City has underfunded the pension plan and has an unacceptably high unfunded actuarial liability;
- This last plan year there was more than 15 percent shortfall between the contribution needed from the City and the City's actual payment. This will aggravate the existing, severe underfunding problem;
- Joplin's flat rate contribution rate fails to comply with recent laws passed by the Missouri legislature, and
- Present underfunding of the pension plan could have a negative impact on the city's bond rating due to recent changes in governmental accounting standards, which require the underfunding to be shown on the city's books.

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Joplin Faces Lawsuit Second of Three Adds

The report notes that if the city does not improve its funding ratio through a large lump-sum payment to correct past underfunding and an aggressive increase in annual payments to meet or exceed the actuarially determined amounts, then litigation will “almost certainly be necessary, and will be recommended.”

Tobben cited Joplin’s violation of Article VI, Section 25 of the Missouri Constitution, because Joplin has failed to ensure this pension plan remained actuarially sound. He also cited the recent ***Neske, et al. v. City of St. Louis, et al.*** case, which he argued and won before the Missouri Supreme Court on behalf of the Firemen’s Retirement System (FRS) of St. Louis. The decision in ***Neske*** establishes the need for “actuarial soundness” as the principle at the heart of the public employee pension plans. Tobben believes that the Neske case also affirms that public pension benefits in Missouri are contractually guaranteed.

In addition, Tobben noted that because the Joplin Police and Firemen’s Pension Fund is underfunded, it has become a target of recent laws passed by the Missouri legislature. One new law labels as “troubled” any plans with a funded ratio below sixty percent. Joplin’s plan has been below 60 percent since 2000. Another provision enables the State to withhold payments to cities like Joplin, if they don’t properly fund going forward.

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Joplin Faces Lawsuit Third and Final Add

Finally, Tobben noted that the trustees of the Policemen's and Firemen's Pension Fund have the responsibility "to act for the exclusive benefit of the participants, beneficiaries, as well as eligible spouses and children of the plan." Tobben noted that "Plan Trustees have a fiduciary duty to file suit to seek judgment against Joplin for money, damages, declaratory relief or injunctive relief, if Joplin doesn't move quickly to solve these problems."

The Legal Report and Opinion demonstrate that the City of Joplin faces many actions against it for noncompliance with state laws and its own ordinances. Tobben recommended giving the city until the January Trustees meeting to come up with, and propose, an acceptable solution to the problem. He cautioned, however, that "Our firm will recommend litigation, unless significant meaningful steps taken by Joplin to solve the underfunding problem."

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Editors' Note: Dan Tobben's bio, photo, commentary and information about Danna McKitrick, P.C. are available on the Danna McKitrick, P.C. Web site www.dannamckitrick.com A copy of the Report and Legal Opinion, without exhibits, will be posted on the Web site following the presentation Wed., Nov. 14, 2007 in Joplin.