

February 7, 2005

Ms. Anne M. Bahr
Executive Director
Milwaukee Employees' Retirement System
Room 603 – City Hall

Re: Firemen's Annuity and Benefit Fund Annuitants

Dear Ms. Bahr:

This opinion is in response to your letter of January 24, 2005. You ask whether the ERS may take over from the Budget Office customer-service work arising out of the disbursements of supplemental payments to the annuitants of the former Firemen's Annuity and Benefit Fund.

The Firemen's Annuity and Benefit Fund is governed by Ch. 34 of the City Charter. Section 34-06 addresses what should happen in the event the Board ceases to exist. In that event, the section authorizes four things. 1. It authorizes the city to purchase annuities guaranteeing benefits payments. 2. It authorizes the City to enter into a contract with an insurance company to administer the benefits. 3. It authorizes the Annuity and Pension Board of the Employees' Retirement System to administer FABF duty-disability benefits. 4. It authorizes the City to enter into additional contracts with the insurance company to administer supplemental payments, if any.

The FABF Board has been dissolved and the following changes have been made: the City has contracted with Principal Life Insurance to administer the benefits and disburse supplemental payments to the FABF annuitants; the

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Employees' Retirement System has undertaken the administration of the FABF duty-disability benefits; and the City's Budget Office has undertaken to provide customer support to the retirees and survivors of the FABF when necessary to distribute supplemental payments authorized by the Common Council.

Under these provisions, the Annuity and Pension Board does not have the authority to take over the customer support work currently preformed by the City's Budget Office. The Annuity and Pension Board is authorized to administer the benefits provided for under Ch. 36, not Ch. 34, except for FABF duty disability. In addition, the Board is authorized as follows: "In addition to all other duties and responsibilities assigned to the board by the provisions of the Employees' Retirement Act, the board shall be responsible for administering the city's group life insurance program, retiree health benefits, and retiree dental COBRA benefits as provided for in ordinance adopted by the common council." § 36-15. There is no provision in either Chs. 34 or 36 authorizing the Annuity and Pension Board to provide services to the FABF, other than administer duty-disability benefits.

The Pension Board's current insurance policy does not unambiguously provide coverage for any work done for the FABF because the FABF is not listed in either the policy declaration or the policy endorsement as an Insured Plan. The Pension Board's current Trust Fiduciary Liability Policy defines a "wrongful act" (for which there is coverage) as "any negligent act, error, or omission solely in the Administration of any Insured Plan." "Insured Plan" means those plans specifically enumerated by declaration or endorsement. In order to unambiguously provide coverage, the FABF would have to be listed as an Insured Plan on an endorsement. Any additional cost for the endorsement should be paid by the City if such coverage is deemed to be necessary. If there is no coverage under the insurance policy, the Board would look to the City-ERS indemnification agreement.

The Indemnification Agreement between the City and the ERS covers losses arising out of the indemnitee's (ERS's) responsibilities under the "Employee's Retirement Act," which is a reference to Chapter 36. By its terms, this does not include FABF customer service work, because it is not authorized under Chapter 36 or any other provision. (Note that administering FABF duty disability benefits is not authorized in Chapter 36, but is authorized in Chapter 34.)

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Under these provisions, the City Budget Office may continue to perform the FABF customer-service work, the City may contract with the Principal Life Insurance Company, or any other company, to perform the service, or it may contract with the ERS to perform the service. In the event that latter option is elected, however, the ERS should seek authorization to perform this work by amending Ch. 36-15 to state as follows: "The Annuity and Pension Board is authorized to perform administrative work necessary to implement the provisions of § 34-06, provided it is compensated by the City for the actual cost of the work performed." Obtaining authorization in this form would place both the ERS's administration of the FABF disability benefits and performance of FABF customer-service work clearly under the protection of the City's indemnification agreement.

Very truly yours,

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

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