



City of Grand Island

Thursday, January 17, 2013

Special Meeting

Item I1

**#2013-16 (A) & #2013-16 (B) – Pre-84 Police Retirees – Remedy
Overpayment of Past Police Retirees**

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: January 17, 2013

Subject: Remedy for Past Overpayment of Police Retirement Benefits and Calculation of Police Retirement Benefits

Item #'s: I-1 and I-2

Presenter(s): Robert J. Sivick, City Attorney

Background

In 1983 the Nebraska Legislature passed LB237 which contained the Police Officers Retirement Act (Act), codified in Article 10(a) of Chapter 16, §§16-1001 - 1019 of the Nebraska Revised Statutes. The Act and the resulting statutes addressed issues regarding pensions for police officers employed by First Class Cities. Amongst those issues were:

1. §16-1007(1) which states in part, “the retiring police officer may elect to receive at his or her retirement date a pension benefit either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee....”
2. §16-1007(2)(b) which states in part, “[i]f the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer...”
3. §16-1007(2)(c) which states in part, “[i]f the police officer chooses the lump-sum payment option, the officer can request that the actuarial equivalent be equal to the average of the cost of three annuity contracts purchased on the open market.”
4. §16-1014 which states in part, “A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to the Police Officers Retirement Act. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee.”

The City of Grand Island (City) has a committee known as the Police Pension Committee (Committee) in accordance with §16-1014. Prior to 2005 the Committee calculated

police retirement benefits on a straight life annuity basis. Beginning in 2005 the Committee began calculating benefits on a joint life annuity basis which resulted in a greater monetary contribution from the City to fund such benefits.

A search of City records indicates the Grand Island City Council (Council) as the governing body of the City never delegated any authority pursuant to §16-1014 to the Police Pension Committee regarding the calculation of benefits or took official action changing the straight life annuity calculation practice existing prior to 2005. Accordingly, between 2005 and the present, any calculation of police retirement benefits on a joint life annuity basis were incorrect and illegal as they were done without the knowledge and consent of the Council, the authority to set or change this policy was not delegated to the Committee by ordinance as required by §16-1014, and the Act required the calculation of police retirement benefits be conducted on a straight life annuity basis.

Because Nebraska law generally limits suits to not more than four years after the event that gave rise to the cause of action, the City is barred from pursuing reimbursement of excess pension benefits resulting from an incorrect calculation of those benefits more than four years ago. Presently, the City may pursue legal action against four Police retirees, Rick Ressel, Dennis Osterman, Roger Philbeck, and Kerry Cole.

These issues were previously the subject of thorough discussion at Study Session, regular, and Special meetings of the Council held on December 11 and 18, 2012 and January 15, 2013.

Discussion

Tonight there are two action items on the agenda for Council consideration.

Item I-1 affords the Council two options for addressing the overpayment of pension benefits to Messrs. Ressel, Osterman, Philbeck, and Cole. Resolution 2013-16(A) makes the finding the above listed retirees received an overpayment of their pension benefits, directs those benefits be recalculated, directs City staff demand reimbursement from the retirees for the overpayment, and directs the City Legal Department to use all available methods to insure the City receives reimbursement.

Resolution 2013-16(B) makes the finding the above listed retirees received an overpayment of their pension benefits but unlike Resolution 2013-16(A), forgives that overpayment. Resolution 2013-16(B) affords the Council the opportunity to avoid the expense and uncertainty inherent in all litigation while not conceding the City's policy was ever to calculate police retirement benefits on a joint life annuity basis. It also allows the City to resolve this issue immediately instead of engaging in litigation for years.

Item I-2 addresses the calculation of police retirement benefits. Resolution 2013-17(A) makes the finding the Council never authorized changing the calculation of police retirement benefits from a straight to joint life annuity basis, any such benefits calculated

on a joint life annuity basis were incorrect and illegal, and all pending and future police retirement benefits shall be calculated on a straight life annuity basis.

Resolution 2013-17(B) allows the Council to direct all pending and future police retirement benefits be calculated on a joint life annuity basis.

Alternatives

It appears the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

The City Administration has no recommendation regarding Resolutions 2013-16(A), 2013-16(B), and 2013-17(A), and 2013-17(B).

RESOLUTION 2013-16(A)

WHEREAS, Article 10 of Chapter 16 of the Nebraska Revised Statutes sets forth the laws governing the pensions of police officers of First Class Cities; and

WHEREAS, Section 16-1007(1) of the Nebraska Revised Statutes requires the City of Grand Island to provide pension benefits to retired police officers “in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee”; and

WHEREAS, Section 16-1007(2)(b) of the Nebraska Revised Statutes states in reference to police pension benefits, “[i]f the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer...”

WHEREAS, beginning in 2005 the Police Pension Committee stopped calculating police pension benefits based on a straight life annuity and began calculating said benefits based on a joint life annuity; and

WHEREAS, Section 16-1014 of the Nebraska Revised Statutes states in reference to police pension benefits, “[t]he governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee.”; and

WHEREAS, the Grand Island City Council as the governing body of the City of Grand Island never approved the calculation of police retirement benefits based on a joint life annuity nor has delegated that authority or function to the Police Pension Committee; and

WHEREAS, Nebraska law generally limits the filing of a suit to four years from the event that gave rise to the cause of action;

WHEREAS, within the last four years the City has paid police pension benefits to Rick Ressel, Dennis Osterman, Roger Philbeck, and Kerry Cole based on a joint life annuity; and

WHEREAS, the issue of police and fire pension benefits was the subject of a Study Session meeting of the Council on December 11, 2012, a regular meeting of the Council on December 18, 2012, and Study Session and Special meetings of the Council on January 15, 2013 ; and

WHEREAS, the Council has determined Messrs. Ressel, Osterman, Philbeck, and Cole were overpaid for their respective police pension benefits and such overpayments should be corrected,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL

Approved as to Form	by _____
January 17, 2013	City Attorney

OF THE CITY OF GRAND ISLAND, NEBRASKA,

That by January 31, 2013, City staff, the Police Pension Committee, and Messrs. Ressel, Osterman, Philbeck, and Cole are directed to recalculate the lump sum pension benefits of said retirees using a straight life annuity pursuant to the procedure set forth in Section 16-1007(2)(c) of the Nebraska Revised Statutes.

That once said recalculations for the individual retirees listed above are completed, City staff is to make formal written demands upon the above listed retirees for reimbursement of the difference between each retiree's pension benefits determined by a joint life annuity and benefits determined by a straight life annuity.

That the City Legal Department is to use all available methods to insure the City receive reimbursement from each of the above listed retirees for the overpayment of their pension benefits.

Adopted by the City Council of the City of Grand Island, Nebraska, January 17, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

RESOLUTION 2013-16(B)

WHEREAS, Article 10 of Chapter 16 of the Nebraska Revised Statutes sets forth the laws governing the pensions of police officers of First Class Cities; and

WHEREAS, Section 16-1007(1) of the Nebraska Revised Statutes requires the City of Grand Island to provide pension benefits to retired police officers “in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee”; and

WHEREAS, Section 16-1007(2)(b) of the Nebraska Revised Statutes states in reference to police pension benefits, “[i]f the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer...”

WHEREAS, beginning in 2005 the Police Pension Committee stopped calculating police pension benefits based on a straight life annuity and began calculating said benefits based on a joint life annuity; and

WHEREAS, Section 16-1014 of the Nebraska Revised Statutes states in reference to police pension benefits, “[t]he governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee.”; and

WHEREAS, the Grand Island City Council as the governing body of the City of Grand Island never approved the calculation of police retirement benefits based on a joint life annuity nor has delegated that authority or function to the Police Pension Committee; and

WHEREAS, Nebraska law generally limits the filing of a suit to four years from the event that gave rise to the cause of action;

WHEREAS, within the last four years the City has paid police pension benefits to Rick Ressel, Dennis Osterman, Roger Philbeck, and Kerry Cole based on a joint life annuity; and

WHEREAS, the issue of police and fire pension benefits was the subject of a Study Session meeting of the Council on December 11, 2012, a regular meeting of the Council on December 18, 2012, and Study Session and Special meetings of the Council on January 15, 2013 ; and

WHEREAS, the Council has determined Messrs. Ressel, Osterman, Philbeck, and Cole were overpaid for their respective police pension benefits and such overpayments should be addressed,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL

Approved as to Form	by _____
January 17, 2013	City Attorney

OF THE CITY OF GRAND ISLAND, NEBRASKA,

That the City Legal Department is directed to send individual letters to Messrs. Ressel, Osterman, Philbeck, and Cole informing them their pension benefits were calculated incorrectly which resulted in an overpayment of those benefits. The letters are to also state the City is within its legal rights to seek reimbursement for the overpayment but will not and instead forgive the overpayment due to the expense and uncertainty of litigation and the City's desire to resolve this matter immediately.

Adopted by the City Council of the City of Grand Island, Nebraska, January 17, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk