



City of Grand Island

Tuesday, December 8, 2015

Council Session

Item F-2

#9568 - Consideration of Administrative Fees for Individual Fire Pension Accounts

Staff Contact: Robert J. Sivick, William Clingman

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: December 8, 2015

Subject: Administrative Fees for Individual Fire Pension Accounts

Presenter(s): William Clingman, Interim Finance Director

Background

In 1983 the Nebraska Legislature passed LB531 which included laws governing pensions for firefighters employed by Cities of the First Class. These laws are codified in Article 10(b) of Chapter 16, §§16-1020 - 1042 of the Nebraska Revised Statutes.

In 1992 and 1993 the Legislature passed LB672 and LB724 respectively which amended Neb. Rev. Stat. §16-1034. That statute as amended and as it presently exists reads,

*A retirement committee shall be established to supervise the general operation of the retirement system. **The governing body of that city shall 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. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.***

*The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. **Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.***

(Emphasis added)

Additionally, the passage of LB672 in 1992 created Neb. Rev. Stat. §16-1036.01 which reads,

The city and the retirement committee shall develop a schedule of investment costs relating to the investment of the funds in each of the accounts in the Firefighters Retirement System Fund, which costs shall be paid out of the funds in such

accounts or assessed the firefighters as provided in such schedule. The schedule of investment costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to the members of the retirement system and shall assess such costs so that each member pays a fair proportion of the costs based upon his or her choice of options and number of transfers among options. All other costs related to the general operation of the retirement system established pursuant to sections 16-1020 to 16-1038 and not allocated or assessed pursuant to the schedule of investment costs shall be considered administrative costs and shall be paid by the city from the unallocated employer account.

(Emphasis added)

A search of City of Grand Island (City) records indicates the Grand Island City Council (Council) as the governing body of the City never delegated any permanent authority pursuant to Neb. Rev. Stat. §16-1034 to the Fire Pension Committee. Additionally, after passage of LB672 in 1992, the Council did not develop a “schedule of investment costs” or delegated authority to the Fire Pension Committee to do so pursuant to Neb. Rev. Stat. §16-1036.01.

The City Attorney serves as legal counsel for the City, all City officials, and City created boards and committees including the Fire Pension Committee. In recent weeks Grand Island Fire Department Shift Commander Scott Kuehl, in his capacity as Chairperson of the Fire Pension Committee, requested a formal opinion from the City Attorney with regard to administrative fees for individual Fire Pension accounts. That opinion (2015-05) is included in the materials for your consideration. The City Attorney concluded the Council must enact an Ordinance setting forth a schedule of investment costs to be assessed to individual firefighters or those costs will have to be paid from the City’s unallocated employer account.

Discussion

Based on Neb. Rev. Stat. §16-1036.01 and City Attorney Opinion 2015-05 if the Council does not develop a schedule of investment costs for individual Fire Pension accounts those costs must be paid from the City’s unallocated employer account. The approval of Ordinance No. 9568 allows the Council to develop a schedule of investment costs.

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 recommends the approval of Ordinance 9568.

Sample Motion

Move to approve Ordinance 9568.

OPINION OF THE GRAND ISLAND CITY ATTORNEY (2015-05)

TO: Shift Commander Scott Kuehl, Grand Island Fire Department
Investigator Mike Nelson, Grand Island Police Department
Marlan V. Ferguson, Grand Island City Administrator
William Clingman, Interim Finance Director
Aaron Schmid, Human Resources Director
FROM: Robert J. Sivick, Grand Island City Attorney
RE: Administrative Fees for Public Safety Pension Plans
DATE: November 23, 2015

Shift Commander Scott Kuehl, in his capacity as Chairperson of the Firefighters Pension Committee, requested my opinion as to who is responsible for the payment of administrative fees for the Firefighter Pension Plan. Since this issue is also applicable to the Police Pension Plan I distributed this opinion to Investigator Mike Nelson who is the Chairperson of the Police Pension Committee. This document constitutes my opinion.

I. BACKGROUND

The laws governing pensions for Police Officers and Firefighters employed by Cities of the First Class are contained in Article 10 of Chapter 16 of the Nebraska Revised Statutes and codified at Neb. Rev. Stat. §§16-1001 - 1019 (Police) and §§16-1020 - 1042 (Fire). Although the laws governing police and fire pensions are similar they differ enough making it necessary I address each separately in this opinion.

II. POLICE PENSIONS

The City of Grand Island allows individual police officers to control a portion of their retirement investments as dictated by State law. The investment itself is administered or managed by a contracted funding agent (presently Wells Fargo) and administrative fees arising from that management are incurred. Neb. Rev. Stat. §16-1004(3) states in part,

*The **expenses incurred by the retirement system** when a police officer directs the investment of all or a portion of his or her individual investment account **shall be charged against the police officer's retirement account** and shall reduce the police officer's retirement value.*
(Emphasis mine)

I believe the Legislature intended the phrase "expenses incurred by the retirement system" to include administrative expenses. The Legislature clearly dictates those expenses related to individual accounts, which is most if not all such expenses, be deducted from those individual accounts. I note this is the generally accepted procedure for all defined contribution retirement plans.

III. FIRE PENSIONS

The statutes governing the administrative costs related to fire pensions are different from those governing police pensions. Neb. Rev. Stat. §16-1034 states,

*A retirement committee shall be established to supervise the general operation of the retirement system. **The governing body of the city shall 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. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.***

(Emphasis mine)

Neb. Rev. Stat. §16-1036.01 states,

*The city and the retirement committee shall develop a schedule of investment costs relating to the investment of the funds in each of the accounts in the Firefighters Retirement System Fund, which costs shall be paid out of the funds in such accounts or assessed the firefighters as provided in such schedule. The schedule of investment costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to the members of the retirement system and shall assess such costs so that each member pays a fair proportion of the costs based upon his or her choice of options and number of transfers among options. **All other costs related to the general operation of the retirement system established pursuant to sections 16-1020 to 16-1038 and not allocated or assessed pursuant to the schedule of investment costs shall be considered administrative costs and shall be paid by the city from the unallocated employer account.***

(Emphasis mine)

The "governing body of the city" is the Grand Island City Council (Council). The Council never delegated any authority to the Firefighters Pension Committee which limits the Committee to the authority delineated in Neb. Rev. Stat. §16-1036 and 1037. I do not know of any action by the Council enacting a schedule of investment costs and directing those costs be assessed against individual firefighter retirement accounts. If such a schedule is not enacted those costs "shall be considered administrative costs and shall be paid by the city from the unallocated employer account" pursuant to Neb. Rev. Stat. §16-1036.01.

IV. CONCLUSION

The statutes governing pensions for police officers and firefighters employed by Cities of the First Class were enacted rather hastily in 1983 in response to fiscal concerns wrought by the farm crisis. As originally written, administrative costs for police officer retirement accounts were assessed against the individual police officers holding those accounts. The law governing administrative costs for firefighter accounts was contained in LB 672, enacted in 1992. I do not know the reason for this discrepancy, like a lot of legislation it could have been an unintended consequence or simply the result of aggressive lobbying.

The Council must enact an Ordinance setting forth a schedule of investment costs to be assessed to individual firefighters or those costs will have to be paid from the City's unallocated employer account.

If you need any additional information do not hesitate to contact me.

ORDINANCE NO. 9568

An Ordinance to develop a schedule of investment costs related to the investment of funds in each individual account in the Firefighters Retirement System Fund.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

I. That pursuant to Neb. Rev. Stat. §16-1036.01 any investment costs related to individual accounts in the Firefighters Retirement System Fund shall be paid out of the funds in such accounts or assessed the individual firefighters holding such accounts. That these costs shall provide for the allocation of the administrative or record-keeping costs of the various investment options available to members of the retirement system and shall assess such costs so each member pays a fair proportion of the costs based upon his or her choice of options and number of transfers among options.

II. Any Ordinances or parts of Ordinances or Resolutions in conflict are hereby repealed.

III. This Ordinance shall be in full force and will take effect from and after its passage and publication pursuant to law.

Enacted: December 9, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
December 4, 2015	☒ City Attorney