

*Presented to PTF
by Bud Gilbert
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ORIENTATION PRESENTATION

FOR

CITY OF KNOXVILLE PENSION TASK FORCE

**CITY OF KNOXVILLE EMPLOYEES'
PENSION SYSTEM – A BRIEF OVERVIEW**

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PRESENTED BY

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PENSION TASK FORCE ORIENTATION PRESENTATION
CITY OF KNOXVILLE EMPLOYEES' PENSION SYSTEM – A
BRIEF OVERVIEW

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HISTORY OF CITY PENSION SYSTEM -- SIGNIFICANT DATES

- March 31, 1923** City of Knoxville incorporated by Private Act -- 1923 Tenn. Private Acts 1483, Chapter 412, House Bill No. 1022.
- 1929** Fireman and Policemen Pension Act -- 1929 Private Acts 301. Established original firemen and policemen pension system as part of the City of Knoxville Charter, which today is known as Plan F (a closed plan).
- 1935** City of Knoxville Pension Act of 1935 -- 1935 Private Acts 540. Establishes the City Employees' Pension Fund for all employees except fireman and policemen, which today is known as Plan B (a closed plan). Also established the Pension Board. See Knoxville City Charter § 1324.
- August 5, 1954** Citizens of Knoxville adopt Home Rule.
- 1962** Pension Act Amendment of 1962. Creates Plan A effective 1/16/63 and closes membership in Plans B and F. Plan A is now closed to future enrollments.
- 1970** Pension Act Amendment of 1970. Creates Plan C effective 1/2/71 and closes entry into Plan A for policemen and firemen. Plan C remains open today.
- November 7, 1994** Participation Agreement signed by City of Knoxville, Knox County, City Pension Board, Knox County Retirement and Pension Board, Knox County School Board and Knox County Education Association ending seven years of litigation regarding pension matters resulting from the forced combination of the City School System into the Knox County School System.
- 1996** Pension Act Amendment of 1996. Creates Plan G for general government employees effective 1/4/97 and closes further entry into Plan A effective 7/1/97.
- November 3, 1998** Knoxville City voters approved referendum to allow the separation of KUB employees from the City of Knoxville Pension system.
- June 8, 1999** City Pension System receives its first qualification letter from the IRS
- January 2001** Old Fire and Police Plan added to the City Pension System as Plan F after referendum approval by city voters in 2000.
- November 2003** City Pension System receives its second qualification letter from the IRS

City of Knoxville Charter- Pension System Excerpts

Section 1324. - Pension Board.

(A)-*Creation, composition, election, terms and quorum.* Effective as of July 1, 1999, the pension board shall consist of eight (8) members as follows: four (4) elected employee representatives, one (1) representative who shall be elected by the Council of the City of Knoxville, two (2) appointed members who shall be the mayor of the city and the city finance director, and one (1) elected representative from those participants who are not employed by the city but who are permitted to continue their participation in the system under section 1352(A) or pursuant to the court decisions decided in connection with the abolition of the city school system in 1987. The four (4) elected employee representatives shall be active members of the system and shall be elected from the following groups of participants and sections of the system (as defined under section 1350.1): two (2) from the general government (to be designated as General Government Seat A and Seat B, respectively), and two (2) from the uniformed bodies (one each from police and fire to be designated as Uniformed Bodies Seat A (Police) and Seat B (Fire), respectively). General Government Seat A and General Government Seat B shall not be occupied by representatives employed within the same city department. The representative who is elected by the Council of the City of Knoxville shall be a resident of the City of Knoxville. Only those active members of the system that are from a particular section shall be entitled to vote for the elected board member representing that section, and for uniformed bodies, only active members in the police department shall be entitled to vote for the Uniformed Bodies Seat A (Police) and only active members in the fire department shall be entitled to vote for the Uniformed Bodies Seat B (Fire). Notwithstanding anything herein to the contrary, at such time as the number of plan participants entitled to continue membership in the system under section 1352(A) or the court decisions referenced above shall be less than two hundred fifty (250), then the board seat representing said participants shall be terminated at the end of the term for the board member so affected and all remaining members of that section shall thereafter be represented by, and entitled to vote for, the board members elected by the general government section.

Except for the board seats held by the mayor and finance director, all other board members shall be elected for a three-year term in accordance with the election rules that may be established from time to time by the pension board and which shall conform to the requirements of this section. Except as herein provided, the election for each elected board member shall be held after the October immediately prior to the expiration of the board member's term but before the end of that year. For purposes of this section, active members of the system shall not include any member who has elected a delayed retirement option under sections 1371.8 or 1390.22 or similar section. Any pension board member who makes such an election shall cease to be a member of the pension board upon such occurrence and the vacancy thereby created shall be filled in accordance with the requirements of this section.

In order to facilitate an orderly transition as of July 1, 1999, the general government representative and the Uniformed Bodies representative serving on the pension board as of that date and whose elected terms expire December 31, 1999 shall automatically hold General Government Seat A and Uniformed Bodies Seat A (Police), respectively, through the remainder of such term. The representative serving on the pension board as of that date as representative of the section 1352(A) participants shall continue to serve through December 31, 2001, so long as

the number of participants thereunder shall not be less than two hundred fifty (250). The pension board shall cause elections to be held prior to July 1, 1999 for board members to hold General Government Seat B and Uniformed Bodies Seat B (Fire), and the persons so elected shall serve through December 31, 2001, and for subsequent elections hereunder shall serve a full three (3) year term. The City Council shall elect a representative hereunder for a term beginning July 1, 1999 through December 31, 2002 and thereafter, for three (3) year terms.

Terms for all elected board members shall commence on January first of the years required under this section prior to its amendment in 1992; provided, however, that a current board member shall continue to serve until the member's successor is elected and notified by the pension board. In the event any elected board member resigns from his or her board position or dies, retires, ceases his or her participation as an active member of the system, or otherwise becomes physically or mentally incapable of performing the responsibilities of a board member (as determined by the unanimous vote of the remaining pension board members), he or she shall cease to be a member of the pension board upon such occurrence. If such occurrence takes place more than six (6) months prior to the expiration of the elected member's term, then the pension board shall conduct an election to fill the remainder of the board member's term created by such vacancy as promptly as practical.

The election of pension board members shall be under the control and supervision of the pension board, but the pension board may authorize a representative of the various sections that are voting in an election to coordinate the election of a board member from such section in accordance with rules established by the pension board.

All contests or appeals of any election under this section shall be directed to the pension board, which shall be the sole judge and have the exclusive authority to resolve any and all questions or disputes arising under this section or the pension board's rules.

A majority of the members of the pension board shall be required to constitute a quorum at any meeting of the pension board. Each January, the pension board shall elect from its members a chair, vice chair and secretary. Notwithstanding any provision in this section to the contrary, effective as of July 1, 1999 the mayor shall automatically assume the position of chair of the board and shall hold the position until the board seat representing the participants under section 1352(A) shall be terminated as referenced above. Upon the mayor's assumption of the position of chair under such circumstances, the pension board shall elect from its members a vice chair and secretary to serve until December 31 of that year with new elections for the positions of vice chair and secretary to take place each January thereafter. At such time as the board seat representing the participants under section 1352(A) shall be terminated, the pension board shall elect from its members a chair, vice chair and secretary to serve until the following January board elections.

(B)-Investigation of applications for pensions. It shall be the duty of said board to investigate all applicants for retirement and disability benefits. Said board shall receive and consider applications of such employees for retirement and where necessary, notify the employee to appear before the board, hear the evidence in connection with the application, and make a decision thereon in accordance with the requirements of this article.

(C)-Approval by board; term of service. It shall be a condition precedent to the granting of a pension, that said board shall have considered the application and made its decision thereon.

(D)-Approval or disapproval of applications to participate; investigations and reports. The board shall also have the right to approve or disapprove the application of any employee before entry of such employee into the plan who is not now contributing to the fund. It shall be the duty of said board to investigate the present pension rolls and contributors to the fund for irregularities of any kind, and when found the board shall cause such irregularities to be corrected.

(E)-Rules as to procedure and examinations; appointment of doctor; payment of expenses. The board shall adopt its own rules as to methods of procedure and examination of applicants for pensions and for examination of those granted pensions, and shall appoint a doctor or doctors to examine and pass upon the physical conditions of applicants. All expenses of the board shall be paid out of the fund provided.

(F)-Physical examinations. Said board shall have the right, at one (1) time or from time to time, to require any applicant for admission to the fund, any contributor to the fund, or any person receiving benefits from the fund to undergo a physical examination. Refusal to have a physical examination when so required by the board shall alone be sufficient grounds for denying benefits under this act to the person so refusing, where the right of such benefits depends upon the existence of a disability incurred in line of duty or upon the existence of any other disability.

(G)-Approval of grant of benefits; finality of denial. No benefits shall be granted under this act for disability incurred in line of duty or for any other disability, unless the granting of such benefits has been previously approved by the board. The decision of the board denying any such benefits shall be final unless such decision is fraudulent or contrary to all material evidence. *(Ord. No. O-252-92, § 15, 9-1-92, ratified 11-3-92; Ord. No. O-249-98, §§ 3, 4, 43, 5-19-98, ratified 8-6-98; Ord. No. O-307-99, § 2, 8-10-99, ratified 8-3-00; Ord. No. O-367-00, §§ 2, 13, 18, 8-22-00, ratified 11-7-00; Ord. No. O-209-02, § 2, 5-28-02, ratified 8-1-02)*

FIDUCIARY RESPONSIBILITY AND STANDARD OF CARE

1. What is a Fiduciary?

A fiduciary is a person holding the character of a trustee. It describes a person having a duty, created by his or her undertaking, to act primarily for another's benefit in matters connected with such undertaking. It requires trust and confidence and scrupulous good faith and candor in the exercise of the fiduciary's duties to those he or she is serving.

2. What standard of care is required of a Pension Board Member?

TCA 35-14-103. Prudent investor rule.

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reliance on the provisions of the trust.

TCA 35-14-104. Standard of care - Portfolio strategy - Risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee may consider in investing and managing trust assets of the following are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) In addition to the permissible investments listed in §§ 35-3-102 - 35-3-111, a trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) The powers granted by this section to trustees, guardians and other fiduciaries shall be in addition to the powers existing under other provisions of this code authorizing investments by fiduciaries.

TCA 35-14-105. Diversification.

(a) A trustee shall diversify the investments of the trust:

(1) Unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying, or

(2) Except as otherwise provided in subsection (b).

(b) (1) In the absence of express provisions to the contrary in the governing instrument, a fiduciary may without liability continue to hold property received into a trust at its inception or subsequently added to it or acquired pursuant to proper authority if and as long as the fiduciary, in the exercise of good faith and reasonable prudence, discretion and intelligence, may consider that retention is in the best interest of the trust and its beneficiaries or in furtherance of the goals of the trust as determined from that instrument. Such property may include capital stock in the corporate fiduciary and stock in any corporation controlling, controlled by or under common control with such fiduciary; and the fiduciary may acquire additional shares of such stock by stock dividends, stock splits, exchanges and conversions for other stock or debentures and exercise of rights to acquire stock of the corporation or another corporation acquiring the stock of the corporation by merger, consolidation or reorganization.

(2) In the absence of express provisions to the contrary in the governing instrument, a deposit of trust funds at interest in any bank, savings and loan association or other financial institution (including the fiduciary and an affiliated depository institution) shall be a qualified investment to the extent that such deposit is insured under any present or future law of the United States. The fiduciary may also hold deposits in such institutions without interest in reasonable amounts and for reasonable times for operating expenses, anticipated distributions and pending investments.

(c) (1) Notwithstanding any other provision of this chapter to the contrary, and except as otherwise provided in the governing instrument, the duties of a trustee regarding the acquisition, retention or ownership of a contract of insurance on the life of the grantor of the trust, or on the lives of the grantor and the grantor's spouse, children, grandchildren, or parents, do not include a duty to:

(A) Determine whether any contract of life insurance in the trust, or to be acquired by the trust, is or remains a proper investment;

(i) As to the type of insurance contract;

(ii) As to the quality of the insurance company;

(iii) Or otherwise.

(B) Diversify the investment; or

(C) Exercise any policy options, rights, or privileges available under any contract of life insurance in the trust, including any right to borrow the cash value or reserve of the policy, acquire a paid-up policy, or convert to a different policy.

(2) The trustee is not liable to the beneficiaries of the contract of insurance or to any other party for loss arising from the absence of these duties regarding insurance contracts under this subsection (c).

TCA 35-14-107. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

TCA 35-14-109. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

CITY OF KNOXVILLE PENSION BOARD REPRESENTATIVES
July 31, 2011

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Mayor – Charter appointed position
No expiration

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Phone 215-7679
Fax: 594-1165

Term expires 12-31-2011

Mr. Jack Banks
Fire Department Seat B
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Phone 556-2210 (cell) Work: 523-1666
Work: 523-7689

Term expires 12-31-2013

Mr. Jim Hutchens
General Govt. Seat A
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Phone 215-2870 Fax 215-2860
Cell: 755-2988

Term expires 12-31-2011

Mr. Jim York
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Financial Director
Charter appointed -No expiration

Mr. Stephen King
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Term expires 12-31-2013

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Term expires 12-31-2011

PENSION BOARD
PROFESSIONAL LIST
REVISED – July 18, 2011

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Section 1350.2. - Administration of system.

(A)-The pension board shall administer the system and shall be responsible for the fund with all duties, powers and responsibilities as provided in this article, and with such additional powers, duties and responsibilities as are reasonably made necessary by the provisions of the city charter as may be amended from time to time. In administering the system, the pension board shall administer the plan in accordance with its terms and shall have the power and discretionary authority to construe the terms of the plan and to determine all questions arising in connection with the administration, interpretation and application of the plan. Any such determination by the pension board shall be conclusive and binding upon all persons. The pension board may contract, sue and be sued in the name of the City of Knoxville Pension Board. The pension board may hire such employees as it deems necessary to properly administer the system, subject to the civil service and salary classification requirements of the city. Said employees shall in all respects be considered employees of the City of Knoxville but shall be under the supervision and control of the pension board. The pension board may delegate to its employees and agents such administrative and ministerial duties and responsibilities as it deems necessary, desirable or convenient to manage and administer the system. The pension board may retain, select, hire or contract with one (1) or more banking or other investment organizations specializing in pension fund investments to act as the trustee of the fund and as investment manager for the pension board and to assist the pension board in the investment, management, supervision and control of the fund. The pension board may delegate certain administrative and other functions to its trustee and investment managers, including but not limited to custody of certain securities and assets of the fund, servicing of the securities and assets, receipt of contributions to the fund, investment and reinvestment of the fund assets, disbursement of funds, preparation and transmittal of detailed monthly statements of cash accounts, preparation and transmittal of annual and semiannual accountings, and general administration of pension fund investments and assets, subject always to the primary responsibility and control of the pension board. The pension board may supervise and control its trustees and investment managers and their activities in connection with the fund in whatever other manner it deems necessary and advisable. The pension board may also dismiss or remove its trustees and investment managers whenever the pension board deems it necessary and advisable and may select and retain successors thereto. The pension board is further authorized to retain counsel, actuarial consultants or other consultants and such other professional assistance as it may from time to time require and which may be necessary to maintain a properly administered and soundly financed system. All expenses incurred by or on behalf of the pension board in the administration of the system during each fiscal year shall be paid by or on behalf of the employer from the fund. The fund shall constitute a trust for the benefit of the members of the pension system and their beneficiaries; and except for the payment of necessary expenses to administer the pension system and the fund, the assets of such trust shall be held exclusively for the benefit of the pension system's members and their beneficiaries.

(B)-The pension board, with the assistance of its trustees and investment managers, shall establish and adopt a written statement of investment goals, objectives and requirements, which shall be known as the "investment policy." The investment policy shall be approved by the city council, and any changes recommended thereto from time to time by the pension board shall also be approved by the city council before they shall become effective. Until such time as the city council shall take formal action to approve the pension board's investment policy, the pension

board's statement of investment goals and objectives in effect on July 1, 1992, shall continue in effect as the pension board's current investment policy. No investment of the fund assets shall in any manner be made, changed, effected, altered, reinvested or in any other manner affected or handled by any agent for the pension board unless the investment or the substitute therefor complies with the investment policy. The pension board, or its duly appointed agent, shall have the authority and power to invest, manage, supervise and control the funds and assets of the fund and additions thereto, subject to lawful disbursement and deductions therefrom, and such other funds and assets specifically assigned to the board's control and responsibility in accordance with the investment policy and is authorized:

(1) To invest in, reinvest in, purchase, sell, liquidate, convert, exchange, hold, retain, acquire by gift, add to and subscribe to the permitted securities at any time and in any amount;

(2) To perform, participate in and exercise such rights, privileges, duties and responsibilities possessed by any other owner or holder of the bonds or other evidences of indebtedness, and common and preferred stock held in the fund; and

(3) To take such other action as the pension board from time to time deems necessary for the proper administration of the system so as to assure that the system is being operated for the exclusive benefit of the members and their beneficiaries (including defraying the reasonable expenses of administering the system) in accordance with the terms of this city charter and the requirements of law.

(C)-The pension board shall cause an audit of the fund to be performed each year by an independent certified public accountant, not an employee of the city or the system. It shall also be the duty of the pension board to annually report to the city council on the condition of the fund, which report shall be filed with the city recorder's office.

(D)-The pension board shall keep a record of all actions taken and shall keep all other books of account, records, and other information that may be necessary for the proper administration of the system and shall be responsible for supplying all information and reports to governmental agencies, members, retirees, benefit recipients and others as may be required by law. The pension board shall also make available to the employers of the system the necessary information to allow employers to distribute to their employees from time to time a report showing the employees' cumulative employee contributions to the system.

(E)-As soon as practicable after the effective date, the pension board shall adopt such actuarial and other tables as are necessary for the administration of the system. The pension board shall cause actuarial valuation to be made every two (2) years to determine the financial condition of the system. At least once in each six-year period, the pension board shall cause an actuarial investigation to be made of the experience under the system. The pension board shall adopt from time to time, as it sees fit, new actuarial and other tables necessary for the administration of the system.

(F)-The pension board shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by any consultant or actuary; all opinions given by any legal counsel selected

or approved by the pension board; and any advice of a qualified investment consultant. The pension board shall be fully protected with respect to any action taken or suffered by the pension board in good faith in reliance upon the advice or opinion of any such consultant, actuary, legal counsel or investment consultant, and all actions so taken or suffered shall be conclusive upon each of them and upon all members or other persons interested in the system.

(G)-All members of Division A shall be covered by the Social Security Act. The pension board shall be authorized and empowered to do all things and to take all actions necessary to meet all requirements of section 218(d) of the Social Security Act in order to provide social security coverage for members of Division A and to effect retroactive coverage for as many years as possible for such members of Division B who voluntarily elect to transfer their membership to Division A, as provided in subdivision C, and to become covered by the Social Security Act. The employer shall be authorized and empowered to negotiate any agreement with the State of Tennessee to accomplish such retroactive coverage; and the employer shall act in accordance with the directions of the pension board in all matters relating to any agreement or agreements or modifications of any existing agreement which may be necessary to accomplish such retroactive coverage, which said agreement or agreements shall be executed by the employer on or before December 31, 1963. The employer shall be authorized and empowered to pay from the fund to the Social Security Administration the amount of any retroactive social security taxes as required by such agreement or agreements or modifications of any existing agreements.

(H)-If any retirement benefit provided for in subdivision B is less than twenty dollars (\$20.00) per month, the pension board, in its discretion, may recommend the payment from the fund of the actuarially equivalent value of such benefit in one (1) lump sum or in such other manner as the board may determine.

(I)-The pension board shall cause the existing City of Knoxville pension fund to be divided into three (3) fund accounts as of the effective date of the 1970 amendment, such fund accounts to correspond to the amounts which would be credited to the three (3) sections as provided in section 1350.1 if the funds in respect of each section had been separately maintained and administered since the inception of the plan. Such division of the fund shall be performed according to generally accepted accounting principles by a national accounting firm chosen by the pension board, and shall take into consideration the past contributions by members of each section, the past contributions by the City of Knoxville in respect of members of each section, the amount of investment earnings allocated to each section in a manner approved by the pension board, the amount of benefits paid to retired members and survivors and beneficiaries of members of each section, and an allocated amount of expenses paid in respect of each section determined in a manner approved by the pension board. From and after the date of such division of the fund, the fund accounts credited to each section shall be separately maintained and administered. The actuarial soundness of the City of Knoxville pension fund shall be determined by the aggregate of its three (3) fund accounts, and each section's actuarial requirements shall be determined independently. Notwithstanding the division of the pension fund and the fund accounts as outlined in this paragraph, the pension fund shall remain as one (1) fund for investment purposes.

(J)-In the event that a member of one section transfers his membership to another section, the pension board shall cause a determination to be made, as of the effective date of the transfer, of the amount to be transferred from the fund account of his former section to the fund account of the section to which he is transferring his membership. Such amount shall be transferred to the fund account of the section to which the member is transferring his membership and shall thereafter be maintained and administered exclusively as a part of such fund account.

(K)-The pension board is authorized to serve as administrator or paying agent for the payment of annuities and all other retirement, disability and savings related benefits, and to perform employee benefit accounting, computer and related services, on behalf of any employer in the system or other governmental entity related to the City of Knoxville or Knox County, including without limitation, the Metropolitan Knoxville Airport Authority, Knoxville Civic Auditorium and Coliseum Board, Knoxville's Community Development Corporation and Knoxville Utilities Board. In providing such services, the pension board is authorized to administer or manage cash, annuities or other insurance products, provided that for all such arrangements entered into under this subsection:

(1)Any annuity or insurance product so utilized shall be purchased from a life insurance company licensed to do business in the State of Tennessee;

(2)All costs and expenses incurred by the pension board in the administration and performance of any such arrangement shall be paid in full by the employer or the covered employee; and

(3)Any such arrangement shall be provided for under a written contract with the employer that is satisfactory to the pension board and which shall provide that the fund and the trusts of the system shall not be subject to any claims or liabilities that might arise on account of the pension board's performance or administration of such contract.

The authority provided under this subsection shall be limited at all times by the requirements of state and federal law including any restrictions that are required to maintain the system as a qualified governmental plan under the Internal Revenue Code, as may be amended from time to time.

(L)-The pension board shall be authorized to adopt such rules, claims, procedures, contested case hearing rules and such other procedures and practices as it deems necessary to properly administer the system, and may provide through such rules and procedures for the suspension of benefit payments under the system to a member or his beneficiary who refuses, upon notice from the pension board, to comply with the requirements of the system or to provide information that is required by law or deemed necessary by the pension board to properly administer the system. Such rules and procedures may also incorporate by reference the rules of civil procedure and other procedural requirements as the pension board may deem necessary or convenient and may provide for reasonable notice and time requirements for filing claims under the system and appeals of the pension board's and its employees' decisions. Notwithstanding any provision to the contrary in this article, such rules and procedures may also provide that no refund shall be paid to a terminated member until the member's employment termination status is final and subject to no further administrative or judicial appeal.

(M)-The pension board is authorized and reserves at all times its right to waive formalities or nonconformities to the requirements of its rules, procedures, and practices when doing so promotes fairness and justice and the pension board determines that such waiver is in the best interest of the system and its members. The pension board is also authorized to initiate and award a disability not in the line of duty pension to a member who applies for a disability in the line of duty pension if the pension board determines that the member is qualified for such benefit in accordance with the disability requirements of the system, notwithstanding the lack of an application for such benefit. The commencement of any such lesser benefit, and its acceptance by the member, shall not be construed as a waiver by the member of any appeal rights the member may have to seek the higher benefit.

(Ord. No. O-145-84, § 5, 8-28-84, ratified 11-6-84; Ord. No. O-252-92, §§ 16, 17, 9-1-92, ratified 11-3-92; Ord. No. O-186-96, §§ 20—22, 6-17-96, ratified 11-5-96; Ord. No. O-441-98, §§ 5—8, 8-25-98, ratified 11-3-98; Ord. No. O-168-00, § 4, 5-2-00, ratified 8-3-00; Ord. No. O-367-00, §§ 5, 8, 8-22-00, ratified 11-7-00; Ord. No. O-209-02, § 4, 5-28-02, ratified 8-1-02; Ord. No. O-128-06, § 4, 6-20-06, ratified 11-7-06)

STRUCTURE OF PENSION CHARTER (Article XIII of the City of Knoxville Charter)

DIVISION 1. FIREMEN AND POLICE PENSION ACT (Plan F) §§1301-1310

DIVISION 2. PENSION ACT OF 1935 (Division B - "The Old Plan") §§1320-1342

DIVISION 3. PENSION ACT AMENDMENT OF 1962 (EFFECTIVE 1/16/63 AND CLOSES PLAN B & F)

(A) General Provisions §§ 1350.1 - 1355

(B) Members of Division A (Applicable to Division A members, now closed) §§ 1360.1 - 1360.31

(C) Division G (Applicable to General City Government only - Effective 1/4/97) §§ 1371 - 1371.8

(D) Reserved -- §§ 1372 -- 1389

(E) Division C of the Knoxville Pension System (Applicable to Division C members - Effective 1/2/71) §§ 1390.1 - 1390.23

PENSION CHARTER BASICS

1. Meaning of Home Rule

a. Home Rule is a special grant of legislative authority by the General Assembly to municipalities. It was added to our State Constitution in 1953, and permits municipalities to adopt this status by a majority vote of the qualified voters voting in a general or special election as authorized by ordinance of the municipality. Article XI, Section 9 of the Constitution of the State of Tennessee.

b. The City of Knoxville adopted Home Rule on August 5, 1954, thereby ending the need to adopt charter amendments by private acts of the General Assembly. Since that time, the substance of the City Pension charter provisions, which are contained in Article XIII of the City Charter have been amended numerous times.

c. With the adoption of Home Rule by the city, the original 1923 Private Act incorporating the city, as amended, automatically became the city's charter under Home Rule. With adoption, the Constitution also expressly provides that "the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect." There has been considerable litigation, however, in construing what constitutes a general law of the General Assembly. In general, it is quite easy for the General Assembly to pass a general law that in actual effect applies only to the city.

d. Because the City Charter is now a Home Rule charter, the State Constitution mandates certain requirements for all future changes to the charter:

(A) Amendment must be proposed by ordinance of City Council (but citizens enjoy the right to initiate an ordinance under existing City Charter language Section 709);

(B) City Council publishes the proposal and submits it to the city's qualified voters at the first general state election to occur sixty (60) days after publication of the ordinance;

(C) If adopted, the proposal shall become effective sixty (60) days after approval by a majority of the qualified voters.

Section 1355. - Requirements for pension amendments.

(a)-Any proposed ordinance or resolution providing for a charter amendment to the system shall be submitted to the pension board for review as to form and effect on the system at least sixty (60) days before city council's consideration of the measure on first reading. Upon the timely receipt of such submittal, the pension board shall promptly complete its review of the proposed measure before city council's consideration of the same and shall submit to city council a written report containing the pension board's comments as to the form and effect of such proposal and recommended changes needed to protect the system or its qualified status under the Internal Revenue Code, or to properly integrate the proposed amendment into the charter.

(b)-In the event any proposed ordinance or resolution providing for a charter amendment to the system is likely to result in an actuarial cost to the system of more than five (5) basis points of the system's asset value annually, or in the aggregate, an actuarial report projecting the cost of the proposed measure shall be submitted to the city council and the pension board prior to city council's consideration of the measure on first reading. Any such actuarial report shall be prepared by a qualified actuary acceptable to the pension board and shall be paid for by the proponent of the measure.

(Ord. No. O-17-06, § 3, 1-31-06, ratified 11-7-06)

Section 1371.6. - Supplemental plan provisions.

The provisions of this subdivision C pertaining to Division G may be supplemented from time to time by one (1) or more written documents to be referred to as the supplemental plan provisions, which shall apply only to Division G and shall constitute a part of the system as if stated herein verbatim. Through the adoption of supplemental plan provisions, the general government employer is authorized to establish those operative provisions of Division G that are required to be so implemented under the terms of this subdivision and to effect all limitations and other requirements of Division G, notwithstanding any other provision in this subdivision to the contrary, that are required to maintain the system as a qualified governmental plan under the Internal Revenue Code, as may be amended from time to time. Supplemental plan provisions shall be initiated upon the recommendation of the mayor and adopted by the city council for the City of Knoxville, without amendment unless with the mayor's written concurrence, by ordinance read at two (2) separate meetings that is passed by a roll call vote. Supplemental plan provisions shall be amended or repealed in a like manner. A current copy of all supplemental plan provisions effected under the authority of this section shall be maintained by the pension board and shall be made readily available to all members of the system upon request.
(Ord. No. O-186-96, § 8, 6-17-96, ratified 11-5-96)

2010 CHARTER AMENDMENT TIMETABLE

August 5, 2010 Referendum

MARCH 18, 2010 (Thursday)	LAST POSSIBLE DATE to submit proposed pension charter amendment to Pension Board for review as to form and effect per City Charter §1355
April 23, 2010 (Friday)	Submittal to City Law Department for distribution to City Council members.
May 4, 2010 (Tuesday)	Recommended first reading date of proposed charter amendment ordinance at regular City Council meeting
May 18, 2010 (Tuesday)	Last possible first reading date of proposed charter amendment ordinance at regular City Council meeting
June 1, 2010 (Tuesday)	Last possible second reading of proposed charter amendment ordinance at regular City Council meeting
June 5, 2010 (Saturday)	Last date to publish proposed charter amendment ordinance – 60 days prior to election
AUGUST 5, 2010 (Thursday)	GENERAL ELECTION – requires majority approval by qualified voters
October 4, 2010 (Monday)	Charter amendment effective date

November 2, 2010 Referendum

JUNE 10, 2010 (Thursday)	LAST POSSIBLE DATE to submit proposed pension charter amendment to Pension Board for review as to form and effect per City Charter §1355
July 16, 2010 (Friday)	Submittal to City Law Department for distribution to City Council members.
July 27, 2010 (Tuesday)	Recommended first reading date of proposed charter amendment ordinance at regular City Council meeting

August 10, 2010 (Tuesday)	Recommended second reading date for proposed charter amendment ordinance at regular City Council meeting (also last possible first reading date)
August 24, 2010 (Tuesday)	Last possible second reading of proposed charter amendment ordinance at regular City Council meeting
September 2, 2010 (Thursday)	Last date to publish proposed charter amendment ordinance – 60 days prior to election
NOVEMBER 2, 2010 (Tuesday)	GENERAL ELECTION – requires majority approval by qualified voters
January 1, 2011 (Saturday)	Charter amendment effective date

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Blackwell v. Quarterly County Court of Shelby County
622 S.W.2d 535 (Tenn. 1981)

FACTS: In 1949, the Quarterly County Court of Shelby County (the governing body) created a retirement system for its county employees by adopting a defined benefit plan providing retirement, disability, and death benefits (the "Plan"). The Plan was funded by required contributions from both the employer and employees. The Plan was amended thirty-six times between 1949 and 1977, generally increasing coverage and benefits; the rate of employee contributions was also increased. By 1977, an employee was entitled to a retirement benefit starting at age sixty if he or she had ten years of credible service or starting at any age if the employee had twenty-five years of credible service. The amount of each employee's retirement benefit depended on that employee's final average compensation. The final average compensation was initially computed based upon the average of the highest compensation paid to the employee during five consecutive years, but the Plan was amended in 1967 to give each retiring employee the option of using the employee's compensation for the last twelve months prior to retirement rather than the five-year average. In 1977, the Plan was amended again to replace the option provisions with a requirement to use the average of the three highest consecutive years' salary for the retiring employee. The 1977 amendment was the cause of the lawsuit, as it had the potential to reduce benefits for most of the county employees covered by the Plan, who could no longer rely on their last year of compensation to determine their Plan benefit.

HOLDING: The issue before the Supreme Court of Tennessee was "the extent to which a local legislative body may validly modify the terms of a retirement and pension plan which it had previously adopted for the benefit of public employees." The Court found that the Plan may be modified if necessary to keep it financially sound under certain circumstances. Specifically, the Court held "that public policy demands that there be a right on the part of the public employer to make reasonable modifications in an existing plan if necessary to create or safeguard actuarial stability, provided that no then accrued or vested rights of members or beneficiaries are thereby impaired." In other words, the modification may not "adversely affect an employee who has complied with all conditions necessary to be eligible for a retirement income." In applying this rule to the facts, the Court determined that the 1977 amendment to the Plan could not be applied to those employees who were eligible to receive an allowance from the Plan (i.e., those with ten years of credible service), but it could be applied to those who did not yet have a vested interest in a benefit under the Plan (i.e., those with less than ten years of credible service). The Court has reaffirmed this holding on several occasions. See, e.g., *Davis v. Wilson County*, 70 S.W.3d 724 (Tenn. 2002); *Knox County v. City of Knoxville*, 786 S.W.2d 936 (Tenn. 1990).

UNANSWERED QUESTIONS: *Blackwell* leaves several unanswered questions, including:

- Does the *Blackwell* holding apply to government defined contribution, or just defined benefit, plans?
- Does the *Blackwell* holding prevent a governmental employer from increasing the required employee contribution rate for its vested employees?
- Does a public employee have a protected right in the factors used by a governmental pension plan to determine actuarial equivalence of benefits?
- Are there financial or actuarial circumstances under which a governmental employer could reduce vested, accrued benefits provided under a pension plan for its employees?