

IN THE CIRCUIT COURT OF THE  
FOURTH JUDICIAL CIRCUIT, IN AND  
FOR DUVAL COUNTY, FLORIDA

CASE NO.:  
DIVISION:

THE CITY OF JACKSONVILLE,  
FLORIDA, a body politic and corporate,

Plaintiff,

vs.

JACKSONVILLE POLICE AND FIRE  
PENSION BOARD OF TRUSTEES, a body  
politic and corporate and an independent agency  
of the City of Jacksonville, Florida; and  
JOHN KEANE, as former Executive  
Director/Administrator of the JACKSONVILLE  
POLICE AND FIRE PENSION BOARD OF TRUSTEES,

Defendants.

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**COMPLAINT FOR DECLARATORY JUDGMENT  
AND ANCILLARY INJUNCTIVE RELIEF**

Plaintiff, The City of Jacksonville, Florida ( "City"), sues Defendants, Jacksonville Police and Fire Pension Board of Trustees ( "Board"); and John Keane, as former Executive Director and Pension Administrator of the Jacksonville Police and Fire Pension Board of Trustees, and alleges:

**General Allegations, Jurisdiction, Venue and Parties**

1. This is an action for declaratory judgment and ancillary injunctive relief under Chapter 86 of the Florida Statutes. This Court has jurisdiction under Section 86.011, Florida Statutes.
2. Venue is properly in this Court pursuant to section 47.011, Florida Statutes.

3. The City is a body politic and corporate and operates as a consolidated city and county government under Florida law, including the City of Jacksonville Charter ( "Charter"). It is a proper party under Section 86.091, Florida Statutes.

4. The Board is a body politic and corporate, created by article 22 of the Charter, and is an independent agency of the City.

5. Pursuant to section 22.01 of the Charter, the Board is "authorized to exercise its jurisdiction, powers, and duties within the territorial limits of Duval County."

6. Pursuant to section 22.04(c) of the Charter, the Board has the power to sue and be sued.

7. John Keane is an individual who resides in Duval County, Florida.

8. Mr. Keane was the Executive Director - Administrator for the Jacksonville Police and Fire Pension Fund until October 1, 2015.

9. The City appropriates monies to the Board for the cost of administering the Jacksonville Police and Fire Pension Fund and for any unfunded liability.

10. All conditions precedent to the bringing of this action have occurred, been performed or been waived.

**DECLARATORY JUDGMENT AND ANCILLARY INJUNCTIVE RELIEF**

11. Plaintiff realleges and incorporates by reference paragraphs 1 through 10 as though fully set forth herein.

12. Article 16 of the Charter establishes the City's retirement and pension benefits. Specifically, section 16.01 requires that all officers and employees of the consolidated City of Jacksonville be members of either the 1937 police and fire pension fund, as established under chapter 18615, Laws of Florida ("PFPF"), or the 1937 pension fund for employees of the City of

Jacksonville, as established under chapter 18610, Laws of Florida, and further provides that the retirement system encompassing these two pension funds “shall be the retirement and pension system for the consolidated government.”

13. Pursuant to section 22.04 of the Charter, the Board has the power to administer the PFPF, to invest the assets of the pension fund and to make rules and regulations for the administration of the pension plan. The Board, however, has exceeded its authority in a number of ways as set forth below.

### **Senior Staff Plan**

14. Section 22.03 of the Charter defines “pension plan” and “pension fund” to mean the “Jacksonville Police and Fire Pension Fund created by chapter 18615, Laws of Florida, 1937.” There is no other retirement plan defined by or included within article 22 of the Charter.

15. Section 22.07(a) provides that the “board of trustees shall have the sole and exclusive responsibility of administering the pension plan, but nothing herein shall empower the board to amend the provisions of the pension plan without the approval of the Jacksonville City Council.”

16. Section 22.07(c) provides that the “benefit plan administered by the board shall be as established by ordinance or charter provision, or by special act or general law of the Legislature.”

17. In September 2000, the Board purportedly created a defined benefit pension plan known as the “Jacksonville Police & Fire Pension Fund Senior Staff Voluntary Retirement Plan” (“Senior Staff Plan”) for “the benefit of Senior Staff employees and other employees of the Board not otherwise enrolled in the City of Jacksonville Retirement System.”

18. Three former employees of the Board are the only Senior Staff Plan members and beneficiaries. One of them is Mr. Keane.

19. All three beneficiaries are retired from the employment of the Board and are currently receiving pension benefit payments under the Senior Staff Plan.

20. The Senior Staff Plan was not approved by the Jacksonville City Council.

21. Each year, for the City's fiscal years 1999/2000 through 2011/2012, the Board submitted to the City its resolution approving the operating budget of the Board and seeking appropriation of funds from the City for the cost of administering the PFPF for each of the fiscal years. The Board neither separately identified within its budget nor informed City Council of the existence of the Senior Staff Plan.

22. The Board did not report within its Comprehensive Annual Financial Reports to the City the existence of the separate Senior Staff Plan.

23. The Board is required to report annually the assets and liabilities of the PFPF.

24. The Board, for over ten years, reported as a part of the PFPF assets the assets of the purported Senior Staff Plan.

25. The Senior Staff Plan was not established by ordinance or charter provision, or by other special act or general law of the Legislature.

26. In 2012, the City first became aware of the creation of the Senior Staff Plan during an audit of the Board's operations.

27. In 2012, a City Council member sought the legal advice of the City's General Counsel as to whether the Board was authorized to create the Senior Staff Plan. Pursuant to section 7.202 of the Charter, the General Counsel rendered an opinion, finding that the Board was not authorized to create the Senior Staff Plan.

28. In response, the Board's counsel issued an opinion to the Board, finding that the Board had the authority to create the Senior Staff Plan.

29. A question, therefore, has arisen as to whether the Board has the authority to establish and administer a defined benefit plan separate and apart from the PFPPF, creating new unfunded liability for the City without City Council approval, and whether the Board had the authority to establish and administer the Senior Staff Plan in addition to its administration of the PFPPF.

30. Pursuant to Section 86.021, Florida Statutes, this Court is authorized to determine "any question" of the construction or validity of a statute, regulation or municipal ordinance and to declare the "rights, status, or other equitable or legal relations thereunder."

31. For cases such as this, Section 86.091, Florida Statutes, provides:

In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard.

32. The proper management of the Jacksonville Police and Fire Pension Fund is of major import and public interest to the City, to the plan participants and beneficiaries, and to the citizens of Jacksonville in general.

33. It is the City's position that the Board's action in creating the Senior Staff Plan was ultra vires and void *ab initio*, and the City seeks the Court's determination as to the validity of the Board's actions.

#### **Retroactive Pay**

34. Pursuant to section 215.425, Florida Statutes, "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made."

35. On May 24, 2001, the Board enacted a Resolution granting Mr. Keane a “one-time, non-recurring payment in the amount of \$21,757.84” as additional payment for the service periods for calendar years 1998, 1999 and 2000.

36. The Board wished to acknowledge the level of service rendered by Mr. Keane “by granting merit increases in conjunction with previous periods of service.”

37. The Board also wished to “acknowledge the impact of inflationary pressures over the last three calendar years” by also giving Mr. Keane additional payment for each of calendar years 1998, 1999 and 2000 based upon the increase in the Consumer Price Index for Urban Wage Consumer for such year.

38. The Board, on November 9, 2009, granted to Mr. Keane and Mr. Cohee four hours of supplemental annual leave per week for a one year period, retroactive to January 1, 2009.

39. Pursuant to section 7.3 of the Jacksonville Police and Fire Pension Fund Board of Trustees Salary and Employment Plan, an employee of the Board may elect to be paid for accrued leave in excess of 840 hours, with payment calculated based upon the employee’s salary rate as of September 30 of each year.

40. The Board’s granting of retroactive pay and retroactive leave was ultra vires and is void *ab initio*.

41. Mr. Keane was the recipient of these unauthorized payments by the Board and should be required to repay to the PFPPF all unauthorized payments.

#### **Excess Benefit Arrangement**

42. Section 415(b) of the Internal Revenue Code establishes a maximum dollar limitation on annual payments to a beneficiary from a defined benefit pension fund. Mr. Keane

retired from the Senior Staff Plan on or about October 1, 2015. Mr. Keane's total average annual pension benefit payments are approximately \$303,000 exceeding the section 415(b) maximum by approximately \$41,600 per year.

43. The Board on October 9, 2015, in order to pay Mr. Keane the excess pension benefit amounts, purportedly approved an amendment to the Senior Staff Plan to provide for an "excess benefit arrangement." The payments for this excess benefit arrangement are to come from the Board's current operating budget because the Internal Revenue Code prohibits payment from either of the two qualified pension plans, the PFPF or the Senior Staff Plan.

44. The Board amended the Senior Staff Plan to create the excess benefit arrangement after Mr. Keane had already retired from the Senior Staff Plan.

45. The Board amended the Senior Staff Plan after City Council had already approved the Board's budget for fiscal year 2015/16. The Board did not obtain Council approval for expenditures associated with the newly created excess benefit arrangement, and no funding was appropriated.

46. Pursuant to section 5.07 of the Charter, the City Council "shall review the budgets and appropriate money to the consolidated government and any independent agencies which request appropriations from the consolidated government."

47. Pursuant to section 14.01 of the Charter, an independent agency entitled to receive appropriations from the City Council is required to submit its proposed budget to the City Council.

48. Pursuant to section 14.02 of the Charter, the City Council approves budgets submitted to it and is authorized to increase or decrease the budget request by any independent agency on a line-by-line basis or a total basis.

49. Pursuant to section 106.331, Jacksonville Ordinance Code, no officer of any independent agency receiving appropriations from the City may expend, or authorize the expenditure of, monies for any purpose for which there has been no appropriation by City Council.

50. The Board requests and receives appropriations from the City.

51. The Board, when it submitted its fiscal year 2015/16 budget to City Council for approval, did not submit to City Council as a part of its budget monies to pay Mr. Keane under the excess benefit arrangement.

52. To date, the Board has neither submitted to the City Council nor obtained a budgetary amendment appropriating monies for the excess benefit arrangement funding.

53. The Board, having no authority to create the Senior Staff Plan, was without authority to amend the Senior Staff Plan. Furthermore, the Board was without authority to create an excess benefit arrangement and authorize payment of such without budgetary approval.

54. The Board's action in amending the Senior Staff Plan and creating the excess benefit arrangement was ultra vires and void *ab initio*.

55. Mr. Keane was the recipient of these unauthorized payments by the Board and should be required to repay to the PFPPF all unauthorized payments.

#### **Reemployment After Retirement**

56. On or about October 1, 2015, Mr. Keane retired from employment with the Board as its plan administrator.

57. Immediately after retiring, Mr. Keane was working for, and being paid by, the Board for providing plan administration services.



58. On or about October 9, 2015, the Board approved entering into a contract with The Keane Company, Inc. (“Keane Company”) for the reasons as stated in the contract, that the Board “will need the services of the retiring director to assist with institutional knowledge essential for the efficient operation of the Board.”

59. The proposed contract further states that “the president of The Keane Company, Inc. (Keane) has served as the Board’s only executive director” and that “Keane began engaging in the activities described in this agreement effective October 1, 2015.”

60. The Board under the agreement seeks to ratify work already done and to compensate the Keane Company.

61. The Keane Company is to be paid at a rate of \$130.00 per hour for work performed by its president, Mr. Keane, with a maximum of forty hours per week.

62. The Keane Company was created by Mr. Keane in September of 2015. Mr. Keane is the president, secretary and treasurer of the company.

63. Under Internal Revenue Service rulings, if the employer and the employee know at the time of retirement that the employee will, with reasonable certainty, continue to perform services for the employer, a separation from employment has not occurred, and the employee has not legitimately retired. Such an action would contravene section 401(a) of the Internal Revenue Code.

64. The Board’s action of paying Mr. Keane retirement benefit payments under the Senior Staff Plan, while paying Mr. Keane to perform the services of the PFPF plan administrator, is unauthorized.

### **Dual Office-Holding**

65. Article II, section 5(a), Florida Constitution, provides: “No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein. . . .”

66. The Board is created under Article 22 of the Charter as a part of the consolidated city and county government. Pursuant to section 18.07 of the Charter, the Board is an independent agency of the City.

67. An office implies delegation of a portion of the government’s sovereign power to the person filling the office and is applied to both elected and appointed offices.

68. The Board’s powers include, among other things, the power to determine a Board plan participant’s benefit amount. § 22.04, Jacksonville Charter. The Board is not merely an advisory body.

69. A membership on a pension board of trustees empowered to administer a pension fund constitutes an “office” for purposes of article II, section 5(a), Florida Constitution.

70. Pursuant to section 22.04 of the Charter, the Board is responsible for administering the PFPF.

71. The Board is operating as the pension board for and is administering the Senior Staff Plan pension fund. The same members of the Board are serving simultaneously as the employee pension board for the PFPF pension fund and for the Senior Staff pension fund.

72. Simultaneous service as a pension board member for two separate pension funds violates the Florida Constitution dual office holding prohibition.

73. The Board's actions in administering the PFPF while also administering the Senior Staff Plan is serving as two separate boards administering two separate defined benefit plans. As such, the actions of the Board are ultra vires and void *ab initio*.

**WHEREFORE**, Plaintiff, City of Jacksonville, prays that the Court will enter an order:

A. Declaring that Defendant, Jacksonville Police and Fire Pension Board of Trustees, is not authorized to establish and administer a defined pension plan separate and apart from the PFPF;

B. Declaring that the Jacksonville Police and Fire Pension Board of Trustees' creation of the Senior Staff Plan is outside the scope of its powers, is ultra vires and void *ab initio*;

C. Granting permanent injunctive relief prohibiting the Board from continuing to maintain the Jacksonville Police & Fire Pension Fund Senior Staff Voluntary Retirement Plan and requiring the Board to terminate such plan; and prohibiting the Board from creating any other defined benefit pension plan without City Council approval;

D. Directing Defendant, John Keane, to repay to the Jacksonville Police and Fire Pension Fund monies paid by the Board to Mr. Keane that were outside the Board's authority; and

E. Granting such other relief as the Court deems appropriate.

Respectfully submitted,

**OFFICE OF GENERAL COUNSEL**

*/s/ Loree L. French*

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