

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

CITY OF QUINCY, FLORIDA,

Petitioner,

v.

**Final Order No. 20-0068
DOAH Case No. 20-1043**

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,**

Respondent.

_____ /

FINAL ORDER

THIS MATTER has come before the undersigned for the purpose of issuing a Final Order, in accordance with section 120.569(1), Florida Statutes.

On November 27, 2019, the Department of Management Services, Division of Retirement (“Division”), sent the City of Quincy (the “City”) a Final Agency Action Letter (Exhibit 1, attached hereto) which notified the City that the Police Officers Pension Plan has not been approved because it does not comply with the requirements of Chapter 185, Florida Statutes. The City was also notified that the Division was withholding the 2018 premium tax moneys in the amount of \$79,263.82. The City filed a Petition for Formal Administrative Proceeding challenging the Division's determination (Exhibit 2, attached hereto), and the case was referred to the Division of Administrative Hearings (“DOAH”) for a formal proceeding. During the discovery phase of the case, the City repealed the ordinance provision at issue and came into compliance with the provisions of Chapter 185, Florida Statutes. Upon Joint Motion of the parties, DOAH entered an Order Granting “Agreed Motion to Relinquish Jurisdiction” (Exhibit 3, attached hereto).

Having considered the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. Petitioner's Petition for Formal Administrative Proceeding is hereby **DISMISSED** and this case is **CLOSED**; and

2. This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Management Services.

DONE and ORDERED on this 11/20/2020 | 12:25 PM EST

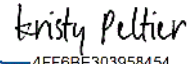
DocuSigned by:

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Jonathan R. Satter, Secretary
Department of Management Services
4050 Esplanade Way
Tallahassee, Florida 32399-0950

NOTICE OF RIGHT TO APPEAL

Unless expressly waived by a party such as in a stipulation or in other similar forms of settlement, any party substantially affected by this final order may seek judicial review by filing an original notice of appeal with the agency clerk of the department of management services, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate district court of appeal. The notice of appeal must be filed within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes.

Certificate of Clerk:
Filed in the Office of the Agency
Clerk of the Department of Management
Services on this 11/23/2020 | 8:11 AM EST

DocuSigned by:

4FF6BE303958454...
Kristy Peltier
Agency Clerk

Copies furnished to:

Thomas E. Wright
Asst. General Counsel
Dept. of Management Services
4050 Esplanade Way, Ste. 160
Tallahassee, Florida 32399-0950

Gary A. Roberts, Esq.
Law Offices of Gary A. Roberts & Associates
130 Salem Court
Tallahassee, Florida 32301

Department of
**MANAGEMENT
SERVICES**

Division of Retirement



Bureau of Local Retirement Systems
Municipal Police Officers' & Firefighters' Trust Funds' Office
P.O. Box 3010
Tallahassee, FL 32315-3010
Tel: 850-922-0667 | Fax: 850-921-2161 | Toll-Free: 877-738-6737

Ron DeSantis, Governor
Jonathan R. Satter, Secretary

November 27, 2019

CERTIFIED MAIL RETURN RECEIPT REQUESTED
ARTICLE NUMBER: 7006 2760 0002 2328 7266

Honorable Keith Dowdell
Mayor of Quincy
404 W Jefferson St
Quincy FL 32351-2328

Re: Quincy Police Officers' Pension Plan

Dear Mayor Dowdell:

This letter serves as notice that the Division of Retirement (Division) is required to withhold the 2018 premium tax moneys, in the amount of \$79,263.82, for the Police Officers' Pension Plan in accordance with Section 185.10, Florida Statutes (F.S.).

The Division notified your agency by correspondence dated August 21, 2019 and August 15, 2018 (copy attached), that the Police Officers' Pension Plan has not been approved, based on a failure to comply with the mandatory participation provisions of Chapter 185, F.S. The issues of non-compliance noted in that letter must be resolved to be eligible for receipt of the 2018 premium tax distribution.

This letter constitutes final agency action. If you do not agree with our decision and wish to appeal this matter, you may take one of the following actions within 21 days of receiving this letter:

- File a request (petition) for a formal hearing. Your request must state the facts you dispute and must comply with the requirements of Rule 28-106.201, Florida Administrative Code (enclosed), or
- File a request for an informal hearing. Your request must state why you disagree with the decision and must comply with the requirements of Rule 28-106.301, Florida Administrative Code (enclosed). If you do not state the disputed facts in your letter, we will automatically treat it as an informal hearing request.

Upon filing a petition for a hearing, you may request that the hearing be delayed in order to allow for the submission of the necessary information for the report to be approved. If you fail to prevail in your appeal or fail to timely appeal the Division's decision, you will not be eligible to receive the 2018 premium tax moneys.

Your request for a formal or informal hearing must be in writing and received by the Department of Management Services, Division of Retirement, within 21 days of your receipt of this letter. The enclosed information page explains the process for the hearings. If you choose to request a hearing, send your written request to:

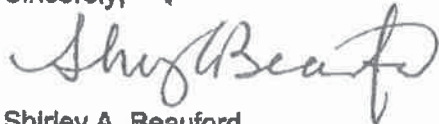
Keith Dowdell
November 27, 2019
Page Two

Agency Clerk and Hearings Coordinator
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, FL 32399-0950

If you fail to petition for a hearing within the time allotted, you will have waived your right to a hearing and the decision set forth in this letter will become final on the 22nd day after your receipt of this letter.

You may contact Stephen Bardin at 850-922-0667 if you need additional information.

Sincerely,



Shirley A. Beauford
Assistant State Retirement Director

SB/sb

cc: Keith Paul, 7006 2760 0002 2328 7099

Enclosures: Email dated August 21, 2019
Letter dated August 15, 2018
Appeal Hearings Informational Page
Rule 28-106.201, Florida Administrative Code
Rule 28-106.301, Florida Administrative Code

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

CITY OF QUINCY,

CASE NO.:

Petitioner,

vs.

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF RETIREMENT,

Respondent.

_____ /

**PETITION FOR FORMAL
ADMINISTRATIVE PROCEEDING**

COMES NOWS, THE PETITIONER, the City of Quincy (hereinafter “the City”), pursuant to Section 121.091, and Chapter 12 Fla. Stat., and Rule 28-106.201, Fla. Admin. Code, Petitioner hereby requests a formal administrative proceedings to contest the proposed final agency action taken by the Respondent, Department of Management Services, Division of Retirement, pursuant to its November 27, 2019 letters (hereinafter “Pension Letters”) received by the Petitioner on December 2, 2019, (attached as Exhibit A) and shows the following:

1. The Agency rendering the decision appealed from is the Department of Management Services, Division of Retirement, Local Retirement Systems, Municipal Police Officers And Firefighters Trust Fund Office, P.O. Box 3010, Tallahassee, FL 32315-3010.

2. This Administrative Appeal is sent to the Agency Clerk Hearings Coordinator, Office of The General Counsel, Department of Management Services, 4050 Esplanade Way, Suite 160, Tallahassee, FL 32399-0950.

3. The Petitioner is the City of Quincy, and its address is the City of Quincy, 404 W. Jefferson St., Quincy, FL 32351-2328, email address, jlmclean@myquincy.net, and the City Attorney, Gary A. Roberts, whose contact information is the Law Offices of Gary A. Roberts &

Associates, LLC, 130 Salem Court 32301, Tallahassee, FL, his email address is garyr@garyrobertslaw.com; phone number is 850-513-0505; and fax number is 850-513-0318.

4. The City seeks a formal hearing challenging the November 27, 2019 Division of Retirement's (Division) decision to withhold the 2018 insurance premium tax monies in the amount of \$43,237.07 for the Firefighters Pension Plan and \$79,263.82 for the Police Officers Pension Plan. Said funds are deposited into City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund (175/185).

5. The City received the November 27, 2019 decision on December 2, 2019 via certified mail return receipt requested. The \$43,237.07 for the Firefighters Pension Plan and \$79,263.82 for the Police Officers Pension Plan are being withheld based on the Division's determination that the City's ordinance, *Ord. No. 999, §§ 3-5, 4-10-07, codified in Chapter 54, Quincy Code*, provides an opt out provision for firefighters and police officers.

6. The specific statutes at issue are Sections 175.121(2) and 185.10(2). The Division contends that these statutes precluded the opt-out provision contained in *Ord. No. 999, §§ 3-5, 4-10-07, codified in Chapter 54, Quincy Code*. The petitioner's position is that it followed the directions and approval of the Division when the City enacted *Ord. No. 999, §§ 3-5, 4-10-07, codified in Chapter 54, Quincy Code*.

7. The City, as required by State Law, Chapter 175, F.S., submitted to the Division the following information in order for the retirement plan of such municipality or special fire control district to receive a share of the state funds for the then-current calendar year:

- a) A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust

agreement, copies of all insurance contracts, and formal announcement material.

- b) An independent audit by a certified public accountant showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.
- c) A statistical exhibit showing the total number of firefighters, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible.
- d) A statement of the amount the municipality or special fire control district, or other income source, has contributed toward the plan for the most recent plan year and will contribute toward the plan for the current plan year.

8. The City, as required by State Law, Chapter 185, F.S, (185) submitted to the Division the following information in order for the retirement plan of such municipality or special fire control district to receive a share of the state funds for the then-current calendar year:

- a) A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust agreement, copies of all insurance contracts, and formal announcement materials.
- b) An independent audit by a certified public accountant showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

- c) A statistical exhibit showing the total number of police officers, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible.
- d) A statement of the amount the municipality, or other income source, has contributed toward the plan for the most recent plan year and will contribute toward the plan for the current plan year.

9. *Ord. No. 999, §§ 3-5, 4-10-07, codified in Chapter 54, Quincy Code*, which provides an opt out provision for firefighters and police officers and the inclusion of the addition of 12% of salary by the City were submitted to the Division at the time of the amendment to the plan.

10. When the City passed *Ord. No. 999, §§ 3-5, 4-10-07*, the Police Officers Pension Plan in City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund did not receive sufficient funds from the premium tax to support the minimum benefits called for by the plan and State Law.

11. The City passed *Ord. No. 999, §§ 3-5, 4-10-07* to redirect the 12% of firefighters and police officers funding from the City Defined Contribution Plan to meet the minimum benefits and add benefits.

12. *Ord. No. 999, §§ 3-5, 4-10-07* was opposed by the police officers and the Florida Police Benevolent Association, who is the police collective bargaining agent, and some firefighters, who did not want to move from the City Defined Contribution Plan. The compromise made by the City was to supply an opt out provision for firefighters and police officers. *Ord. No. 999, §§ 3-5, 4-10-07;02, codified in Chapter 54, Quincy Code*, changes

were submitted to the Division, during the City's legislative deliberation process. The ordinance added section 54-(b) (1), which read:

All police officers and firefighters who have not made the affirmative election as provided in subsections 54-57(b)(1) and (2) shall participate in the City of Quincy Florida Municipal Police Officers' and Firefighters' Retirement Fund.

13. The City did not receive any adverse comments or directions from the Division. From 2002 until 2018, the City followed the reporting requirement of State Law and mandates of *Ord. No. 999, §§ 3-5, 4-10-07*. In the ensuing 17 years, the Division never brought to the attention of the City that the ordinances it submitted for review violated State Law.

14. For the first time, on or about August 15, 2018 the Division notified via a letter the Chairman of Quincy Police Officers And Firefighters Supplementary Pension Plan that section 54-57 (b) of the codified ordinance "appears that the plan allows police officers and firefighter members the opportunity to opt out of participation [and the 175 and 185 pension plan] within the first 30 days of employment with the city." (Insert added). The August 15, 2018 Division's letter further reads

"it appears that this optional participation provision conflicts with the statutory minimum benefits and standards of the chapter and may jeopardize receipt of future premium tax revenues." The letter requests the City to consider "amending this section to remove the optional participation element."

15. The City called the Division in August 2019 when it received the August 15, 2019 Division letter, telling the Division that it submitted *Ord. No. 999, §§ 3-5, 4-10-07* and that it relied on the actions of the Divisions in not objecting to and approving *Ord. No. 999, §§ 3-5, 4-10-07*.

16. The Division did not list its prior actions related to *Ord. No. 999, §§ 3-5, 4-10-07* in the final agency action. The omission of this fact is pertinent and crucial to a determination on whether the optional participation provision conflicts with the “statutory minimum benefits and standards” in State Law under the fact of this case.

17. The Division’s November 27, 2019 letter, which notified the City of its final action to withhold the insurance premium tax dollars, affects substantially the interests of the City and the affected firefighters and police officers.

18. The Division represented to the City that *Ord. No. 999, §§ 3-5, 4-10-07* followed State Law and is now taking a contrary stance to a later-asserted position. The City justifiably relied on the actions of the Division in annually approving the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund.

19. On average the City has 20 firefighter positions and 27 police officer position since 2007. All firefighters are participants in the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund.

20. All, but 5 of the police officers, opted out of the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund and are participants in the City Defined Contribution plan.

21. A significant number of the firefighter retired between 2015-50% of the workforce. Presently their benefit calculations were based on the enhanced 12% of benefit purchased. The firefighters' benefits were calculated without the benefits of a mandatory participation program. Currently, 60% of the firefighters have one to three years of service with the City.

22. Five (5) police officers opted out of the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund; the balance of the police officers are participants in the City's Defined Contribution Plan.

23. One (1) police officer is within two years of retirement eligibility in the City's Defined Contribution plan. Two (2) are within 5 years of retirement eligibility in the City's Defined Contribution Plan. Currently, 80% of the police officers have less than 10 years of service with the City.

24. The current City police officers, per the City Ordinance, are *irrevocably barred from further participation in the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund* at any time. The Division's change in position is detrimental to the City and the opt-out police officers. See Chapter 54-57.

25. If the police officers who are currently members of the City Defined Benefit Plan are required to participate in the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund, each police officer must pay into the trust fund the amount he has withdrawn or did not pay into the trust fund, plus interest and administrative costs as determined by the board of trustees to ensure the plan is actuarially sound.

26. The City does not have the funds to pay for the police officers' trust fund repayment or the loss 185 premium tax from 2007 to 2019.

27. Because of the foregoing statement of facts, the Division should be barred from requiring the City to mandate participation of current members in the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund or imposing on the City an obligations to pay the lost 185 premium tax funds from 2007 to 2019.

28. Based on the forgoing statements of facts and circumstances, the Division is equitably estop for requiring the City to amend the City of Quincy Florida Municipal Police Officers' and Firefighters' Supplementary Retirement Fund to require mandatory participation by current and new police officers and firefighters or the City to fund dollars to make the plan actuarially sound, or fund the loss of 185 forfeited insurance premium tax or to require the opt-out police officers to payback into the plan.

WHEREFORE, THE PETITIONER, THE CITY OF QUINCY, respectfully requests that the foregoing petition for a Formal Administrative Proceeding be referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct a formal administrative hearing after the parties' reasonable opportunity to conduct discovery and case preparation. The Petitioner seeks an entry of a recommended order and final order overturning the Department's position that the City's firefighters and police officers cannot opt out of the State's retirement plan pursuant to Chapters 175 & 185.

Respectfully submitted,

GARY A. ROBERTS & ASSOCIATES, LLC

/s/ Gary A. Roberts

GARY A. ROBERTS, ESQUIRE

FLORIDA BAR NO. 0069620

130 Salem Court

Tallahassee, Florida 32301

(850) 513-0505

(850) 513-0318-Facsimile

E-Mail garyr@garyrobertslaw.com

Attorney for The City Of Quincy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by email to the Clerk, AgencyClerk@dms.myflorida.com and Shirley A. Beauford, Assistant State Retirement Director, Department of Management Services, 4050 Esplanade Way, Suite 160, Tallahassee, Florida 32399-0950 on this 18th day of December 2019.

/s/ Gary A. Roberts

GARY A. ROBERTS, ESQUIRE

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF QUINCY,

Petitioner,

vs.

Case No. 20-1043

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent.

_____ /

ORDER GRANTING "AGREED MOTION TO RELINQUISH JURISDICTION"

The instant case is before the undersigned based on an "Agreed Motion to Relinquish Jurisdiction" ("the Motion to Relinquish"), filed on May 28, 2020. Via the Motion to Relinquish, the parties state that they have reached a settlement and that a formal administrative hearing is no longer necessary. Accordingly, it is, therefore,

ORDERED that:

1. The Motion to Relinquish is GRANTED, and the final hearing scheduled for June 5, 2020, is CANCELED.
2. The case file of the Division of Administrative Hearings is CLOSED.

DONE AND ORDERED this 2nd day of June, 2020, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of June, 2020.

COPIES FURNISHED:

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Department of Management Services
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