

December 6, 2010

Major (Ret.) Darryl Anderson  
Retiree Board Member  
Ohio State Highway Patrol  
Retirement Board  
6161 Busch Blvd.  
Columbus, Ohio 43219

Dear Major (Ret.) Anderson:

We write to you concerning a resolution currently under consideration by the Ohio State Highway Patrol Retirement Board. The resolution, drafted by a Special Committee on Public Pension Issues (see below) was proposed, reviewed and revised for distribution to the System's active and retired members at the Board's October 28, 2010, meeting. The resolution was subsequently posted on the Retirement Board's web-site as well as on TroopertoTrooper, seeking feedback before a vote by the full Board at the December 16th meeting.

## **“Highway Patrol Retirement System Special Committee on Public Pension Issues**

### ***Draft Recommendation to the Full Board***

The Highway Patrol Retirement Board (hereinafter “the Board”) recognizes the desire of the various media sources in the State of Ohio to obtain basic pension records from the Highway Patrol Retirement System and of the potential benefits to the system if these records are carefully released. The Board also recognizes our membership's right to privacy in their post-employment lives and activities.

The Board recognizes and the Ohio Attorney General's appointed counsel agrees that Ohio Revised Code sections 5505.04 C (2) and 149.43 A (1) (v) prohibit release of confidential personal history record information by the Board. Therefore, the Board cannot release these records under the current public record laws and the laws governing the Highway Patrol Retirement System.

The Board, therefore, resolves to consider any changes by the Ohio General Assembly to the publicly-funded pension systems in the State of Ohio mirroring public records statutes currently in place for active HPRS members.

The Board further resolves to continue dialogue with the other public pension systems in the State of Ohio to provide input and support to the General Assembly in the crafting of legislation to ensure the rights of our membership as well as the public's right to know.”

We have carefully reviewed the July 2010, public records request from the Ohio News Organizations to our Executive Director Dan Weiss, as well as, the release of public records and exceptions to their release contained in: ORC 149.43 (1) (v), 5509-9-5 (A) (1), and 5505.04 (C) (1) (2); (D).

Based upon our review and understanding of the requested public records, the current laws and, the Board responsibility or "*Duty to Protect*" against the release of unauthorized confidential records, we completely support the Board's decision not to release the records. Current law must be followed.

In a lingering recession, with high unemployment and looming budget deficits there is little doubt that pension legislative reform will be a subject of great debate when the Ohio Legislature begins to consider the state's next biannual budget. The Toledo Blade reported in a November 4, 2010, editorial, that a new study by economists at Northwestern University and the University of Rochester ranks Ohio first among states in promised yearly state pension benefits as a percentage of forecast tax revenue. The study predicts that Ohio's pension-fund assets will run out within 20 years.

So it is within this national and even international context, the seemingly innocuous micro public records request from the Ohio News Organizations- to all five Ohio State Pension Systems- brings to the table a number of monumental macro pension reform issues. The micro question concerning the release of pension records without a change in current Ohio law is clear. They cannot be released. However, the macro pension reform questions lingering in the minds of our retirees and active members, as they review the posted resolution and read about pension reform issues in New Jersey and California, will undoubtedly have significant affect on the nature of the feedback they provide to the Board. Retirees and active members are concerned about the stability of their pensions and benefits.

In August 2010, in an article for the Markkula Center for Applied Ethics at Santa Clara University, author Miriam Schulman provides some insight and perspective on the macro issues of pension reform. In her article, "Thinking Ethically about Government Pensions", she asks 5 provocative questions:

**1. From a Utilitarian Perspective: Which option will produce the most good and do the least harm?**

The state of California faces a \$19.1 billion budget deficit for the coming fiscal year; New Jersey faces a \$10.5 billion deficit; and so forth. With shrinking government revenues, what expenditures will help the largest number of citizens? Could funds that currently support pensions be used for services, or will decreases in worker benefits discourage the best employees from entering public service?

**2. From a Rights Perspective: Which option best respects the rights of all who have a stake?**

A right is a justified claim on others. Do workers who have negotiated for their pension plans have a justified claim on government coffers to pay for what they have been promised?

**3. From a Fairness Perspective: Which option treats people equally or proportionately?**

Some workers in the United States have pension plans; some do not. Is it fair for government workers to expect pensions when many private sector workers do not have such plans? Is it fair for workers to bear the primary burden of bringing down public spending, or should the pain be spread to citizens in the form of diminished services or higher taxes? Are two-tier plans (where new hires are not entitled to the same pensions as current workers) fair when two people doing the same job are compensated differently?

**4. From a Virtue Perspective: Which option leads me to act as the sort of person I want to be?**

Are workers who demand their full pensions, even in the face of bankrupting the government, being selfish? How might other stakeholders, such as taxpayers or elected representatives, demonstrate unselfishness?

**5. From a Common Good Perspective: Which option best serves the community as a whole, not just some members?**

While the budget negotiations are in process, different groups-unions, mental health advocates, park users, seniors, businesses-all advocate for what they see as best for their constituencies. Whose role is it to think about the good of the whole community? Are public servants supposed to represent the interests of the groups that helped elect them (including unions) or the common good? Pension plans have sometimes been a way for city councils to put off paying the cost of salaries and benefits to a future time, when the council members who voted for the pension package, are no longer in office. What is the effect of such deferment on the next generation? These perspectives and others will certainly be debated in the Ohio Legislature as well as other legislatures across the nation as States struggle to balance their budgets by increasing taxes, reducing costs or passing pension reform legislation.”

The Ohio State Highway Patrol Retirement System, since it's inception, has established a record of compliance with the standards of financial excellence, laws, rules, regulations and policies. The Ohio State Highway Patrol Retirement Board has performed in a similar manner and has historically given careful consideration to established ethical practices. Pensions ( Age and Service, Disability, Survivor Benefits, Survivor Benefits and Deferred Retirement Option Plan) granted by the System and approved by the Board have been consistent with existing law and policy. All Board actions have been conducted with the approval of the Ohio Attorney General's Office.

The Ohio State Highway Patrol Retirement System, The Retirement Board and the systems retirees have nothing to hide from public review of the systems financial pension records. Medical and personal records should remain private and not be released. Balancing public employees' right to privacy and the public's right to know is indeed a cornerstone of our democracy. Sunlight has long been known as one of natures best disinfectants.

If any of the State's pension systems or retirement boards violated past or present statutes or breached their fiduciary responsibility, those violations need to be corrected and responsible parties brought to justice.

On November 2, 2010, a San Diego Superior Court judge ordered pension officials to release public records on high-earning retired county employees. The information had previously been denied to a watchdog group. Judge Timothy Taylor's decision in part stated:

".....In light of the foregoing, the court will order the records disclosed with the proviso that neither CFFR nor Fritz may publish the surnames of the SDCERA retirees on any internet page or other publicly available site. In doing so, the court recognizes that it is conceivable that allowing CFFR the ability to conduct the further research it wishes to do this might cause "discomfort or embarrassment" to the retired public employee. The Supreme Court has already found that "to the extent some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one and is, accordingly, entitled to diminished weight in the balancing test we apply under section 6254, subdivision (c). " *Local 21, supra*, 42 Cal. 4th 319,331. The court is bound by its oath and the doctrine of *stare decisis* [*AutoEquity Sales v. Superior Court*], 57Cal.2d450,455(1962)] to follow this binding precedent. The fact that, in contrast to the current employees at issue in *Local 21*, the pension rights at issue here cannot be revoked or changed is not enough to persuade the court that the Supreme Court would rule differently in this case than it did in *Local 21*. In light of the Attorney General opinions stretching back to at least 1955, the court concludes that the retirees (like the employees in *Local 21*), by accepting public employment, accepted a reduced expectation of privacy in their overall compensation packages. This is supported by the case law cited on page 21 of the Reply. The court finds that this determination strikes the proper balance between the public's right to know and the retiree's diminished (but not extinguished) right to privacy..."

In this case and others to surely follow, the court recognized the retiree's diminished but (not extinguished) right to privacy with the public's right to know (emphasis by this writer). Even though this decision is from a California Superior Court, one could reasonably expect very similar decisions from Ohio Courts.

In our view, working with the Ohio Legislature and the other state pension systems to protect the privacy rights of system members and meet the public's right to know would be the best course of action for our retirement system to pursue.

Given the potential benefits to the Ohio State Highway Patrol Retirement System, as stated in the Resolution, and in the spirit of openness and transparency, we the undersigned request the Board pass the resolution as written.

Sincerely,

Col. Robert M. Chiaramonte (Ret.)

Col. Jack B. Walsh (Ret.)

Col. Thomas W. Rice (Ret.)

Col. Warren H. Davies (Ret.)

Col. Kenneth B. Marshall (Ret.)

Col. Kenneth L. Morckel (Ret.)

Col. Paul D. McClellan (Ret.)

Col. Richard H. Collins (Ret.)