

RESOLUTION NO. 301

WHEREAS, the Fire and Police Disability and Retirement Fund operates within an administrative framework structured by local law and is overseen by a Board of Trustees consisting of elected and appointed members of the Fire and Police Bureaus, and

WHEREAS, the benevolent intent that served as the original concept for the development of the Pension Plan has grown in complexity. The simplicity in which the tracking of reports has occurred long evaporated and the complex requirements reporting to Plan participants, to the taxpayer, to the parent jurisdiction and beneficiaries has increased by geometric proportion. Regulatory provisions and adverse legislation which constrain the time of the Trustees are commonplace. The potential for liability has increased. Complexity is a reality, and

WHEREAS, service to the beneficiaries of our Pension Fund is the primary function of our Pension Fund Trustees. The beneficiaries of our Pension Fund are sovereign and the Trustees of those funds are ultimately responsible to them. In those situations where the law is not clear, the best interest to the Fund beneficiaries must be served. Conscience is critical. Good ends never justify unethical means, and

WHEREAS, to this end, the Trustees of the Portland Plan have developed a Code of Ethics to assist its Trustees and Administrator. The Code is designed to assist them and to be a source of ethical reasoning for fiduciary responsibilities in the performance of their duties. The Code of Ethics includes certain principles which by adoption of this Resolution becomes, not only a guide, but a code of behavior to be followed in the relationship in the service of our Plan participants and beneficiaries.

NOW, THEREFORE, BE IT RESOLVED, that the Code of Ethics attached hereto as Exhibit "A" be and is hereby adopted as the Code of Ethics of the Fire and Police Disability and Retirement Fund.

ADOPTED by the Board of Trustees on the 9TH day of December 1997.



Edwin L. Freeman
Fund Administrator

3rd DRAFT

City of Portland, Oregon



FIRE AND POLICE DISABILITY AND RETIREMENT FUND



CODE OF ETHICS

Adopted By The Board of Trustees

12/09/, 1997

Resolutions File
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MISSION STATEMENT

The purpose of the Board of Trustees of the Fire and Police Disability and Retirement System of Portland, Oregon, is to safeguard ~~and promote~~ the rights and benefits of active ~~X~~ and/or retired Fire and Police employees and their survivors. The Fire and Police Act which is embodied in Chapter 5 of the City Charter of the City of Portland is a legally constituted disability and pension benefit system.

Generally, this Plan is in the business of providing statutory defined retirement and disability care benefits, a defined benefit plan. These benefits are provided to members, retirees and their beneficiaries. This is accomplished through the maintenance of ethical and fiduciary standards in policy development and Fund operation, the objective of which is to preserve the financial integrity of the funds and the maintenance of the actuarial soundness of the Fund, while balancing the cost of benefits between present and future members and the taxpayers of the City of Portland.

To further the welfare of our members, the Board of Trustees has developed this ethics code. The ~~information~~ ^{Principals} contained herein ~~is~~ ^{are} binding in nature. Recognizing that its ~~X~~ application is not discretionary and is accepted and adopted by the Board of Trustees this 9TH day of December 1997.

And so it goes throughout the years. The National Conference on Public Employee Retirement Systems, founded in 1941, itself was a call to public employees who were members of pension funds to organize to prevent intrusions by the Social Security System. Soon it became clear that the Public Employee Retirement Systems were critically important to the nation as a whole, and in need of support services. (The Portland Plan has been a member of the National Conference for over three decades).

The insurance industry was the first to respond. Pension systems began to shape social conditions and to alter the economic behavior of the country in major ways. Socially, they reshaped life in this country. Before 1950, for example, more than 30 percent of aged Americans lived with their children. However, by 1970, that number had dropped to only 9 percent, largely directly attributable to people's ability to sustain themselves because a new structure of pension systems that had emerged over that time period make it possible. Another example -- in previous eras, people had worked literally until they died. But from 1950 to the 1970's, the number of years that people spent in retirement doubled, from five years to almost twelve years, as life spans were extended because of medical advances, better nutrition, financial ability, and so forth.

Administration of Systems

Pension funds generally operate within an administrative framework structured by state and local laws, overseen by retirement boards consisting of elected, appointed and ex-officio members. They are generally administered by a variety of jurisdictions, from independent authorities to divisions of state governments, to local governments, and special districts. Generally, the type of jurisdiction may affect the amount of resources available for administering the system and managing decisions. Further, the nature of the administering jurisdiction generally has an impact on the number of board members, staff size, budgets, the type and number of benefits, cost of living benefits, actuarial assumption applications and employer-employee contributions.

The Board of Trustees

For the majority of retirement systems, overall management generally falls within the purview of a system's retirement board or board of trustees. These board members are often assigned the task of initiating and implementing policy decisions within the framework of the plan document. Staff assistance may vary, depending on the administering jurisdiction.

another. Yet the interfacing process does not in and of itself stop there, for it extends in multi-directions, often embracing the following relationships:

- Plan Participants.
- Beneficiaries.
- Actuaries.
- Consultants.
- Money Managers (anticipating Future Funding).
- Attorneys.
- State and local governments.
- Unions.
- Taxpayers.

Complexity of Operation

The benevolent intent that served as the original concept for the development of this pension plan has grown in complexity. The simplicity in which the tracking of reports has occurred long evaporated and the complex requirements for reporting to plan participants, to the taxpayer, to the parent jurisdiction and beneficiaries has increased by geometric proportion. Regulatory provisions and adverse legislation which constrain the time of trustees are commonplace. The potential for liability has increased. Complexity is a reality.

Conclusion

The design origin of all public pension plans emanated from state and local governments. Within this environment, the evolution of the size of the assets and the types of benefits has increased geometrically. State and local retirement systems exist within an administrative framework that is structured by state and local laws, and overseen by retirement boards consisting of elected, appointed and ex-officio members. This retirement board has substantial authority over the system and is involved in the decisions regarding policy, benefits, and actuarial assumptions. The Board of Trustee has the responsibility to interface not only with the members but a multitude of players in the public pension

PREAMBLE

To understand the role of this Ethics Policy in the context of administration of the Portland Fire and Police Plan, it is essential that the trustees, administrators, government and citizens understand the responsibilities of those who govern and administer the Plan. We, the Trustees and our Administrators, must be keenly aware of who benefits from the Plan and acknowledge that the citizens of this City financially support our endeavors.

This Pension Fund is administered by a composite board comprised of representatives of the sponsoring entity, or their respective appointees, and members who represent the Plan participants and their respective beneficiaries. In effect, the composite board members hold the highest positions of trust because they are stewards of retirement assets, persons who by their mere position are required to exercise diligence and prudence.

Many additional duties have been added to the list, which require greater attention to fiduciary standards--not only of board members, but on an extended continuum, board staff, consultants and financial advisors who all serve in the administration of the goals and objectives of the Portland Plan.

In this respect, the drafters in the construction of this ethics policy, have taken heed of the following commandments:

1. *Drafters should not be so restrictive and burdensome that the policy or rule prevents and constrains the individual from operating efficiently.*
2. *Drafters should not acquiesce to specific whims, making the whims a general rule.*
3. *Drafters should not rationalize the irrelevant to create gospel.*
4. *Drafters should not attempt to control that which they cannot control.*
5. *Drafters should not open doors which could inevitably be slammed shut behind them.*

GUIDING PRINCIPLES

1. *Service to the beneficiaries of our pension fund is the primary function of our pension fund trustees.*

2. *The beneficiaries of our pension fund are sovereign and we trustees of those funds are ultimately responsible to them.*

3. *In those situations ^{after thorough investigation} where the law is not clear, the best interests of the fund beneficiaries must be served. Conscience is critical. Good ends never justify unethical means.*

4. *Efficient and effective administration and management is basic to public pension funds. Misuse of influence, fraud, waste or abuse is unacceptable conduct.*

5. *Safeguarding the trust of fund beneficiaries is paramount. Conflicts of interest, bribes, gifts or favors which subordinate fund trustees to private gains are unacceptable.*

6. *Service to our pension fund beneficiaries demands special sensitivity to the qualities of justice, courage, honesty, equity, competence and compassion.*

7. *Timely and energetic execution of fiduciary responsibilities is to be pursued at all times by the fund trustees.*

Article II

"The beneficiaries of this fund are sovereign and the trustees of this fund are ultimately responsible to them."

Our beneficiaries who rely on trustees expect them to act with integrity, objectivity, and due care. Integrity is an element of character. Integrity will not accommodate deceit or subordination of principle. Integrity is measured in terms of what is right and just. Integrity requires a trustee to observe the principles of objectivity, independence and prudence.

Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing factor in the profession of pension administration. The principle of objectivity imposes the obligation to be impartial and intellectually honest. Independence precludes relationships that may appear to impair a member's objectivity in rendering trustee fiduciary services. Subordination of judgment is to be avoided.

The maintenance of objectivity and independence requires a continuing assessment of fiduciary responsibility.

Possession of these attributes by trustees will allow them to serve responsibly the uncompromising interest of beneficiaries of public pension funds.

Article III

"In those situations where the law is not clear, the best interests of the fund beneficiaries must be served. Conscience is critical. Good ends never justify unethical means."

Increasingly, we as a society look at the law to define right and wrong, moral and immoral; the notion that law sets the floor rather than the ceiling receives little credibility. By the same token, the tendency to focus on the law leads to a withering of interest and concern for the ethical. The implicit assumption increasingly becomes that if government has not forbidden it, it must be acceptable. This results in increased dependence on legal process to define the limits, and the game becomes one of avoidance and loophole closing. The result is fundamental change in the mores of society.

We trustees must decide, consciously and deliberately, what role ethical considerations will play in the decision-making they are required to undertake. What is legal and what is ethical

perception that there is a need to regulate the administration of public pension funds. The public perceives that there is a need to avoid what has transpired in central government, to avoid mismanagement, waste and inefficiency.

Trustees not only have to deal with accountability demanded by the public at large, they must also be accountable to their peers, to their participants and beneficiaries. This accountability not only extends to their role of representation, but it involves a myriad of responsibilities in order to effectuate the type of efficient administration expected by the law and by the constituents of the fund. To avoid the perception of misuse of influence, the trustee must be willing to adopt rules and regulations that preclude and inhibit that type of activity. Furthermore, trustees must adopt policies and procedures that eliminate waste and embrace the concepts of sound cost effective measures, both as to their administrative staffs and as to their personal involvement as trustees.

Among the major areas of responsibilities that trustees of the Portland Plan must deal with are the following: the adoption of accounting standards and controls; the adoption of sound actuarial standards; the formation of procedures for internal reporting and control; the duty of providing benefits in a responsible fashion that does not cause an undue burden to the taxpaying community nor to the individual member; and compliance with the overall duties of the office.

Trustees must have the flexibility to interface with other members of the pension community whose actions can greatly impact the operation of a fund, to wit: auditors, consultants, financial advisors, and state and local government personnel and officials.

This flexibility must be extended to include membership and participation in national organization whose goal is to improve and safeguard public pensions. When government downsizes, effective management and administration presents a significant challenge which must be met and which must be preserved from erosion due to undue influence, fraud, waste or abuse.

Article V

"Safeguarding the trust of fund beneficiaries is paramount. Conflicts of interest, bribes, gifts or favors which subordinate fund trustees to private gains are unacceptable."

One can never catalogue all the conduits by which trustees may be induced to manage beneficiaries' assets or benefits in ways that benefit the trustee or a third party rather than the

Article VII *"Timely and energetic execution of fiduciary responsibilities is to be pursued at all times by fund trustees."*

The quest for excellence is the essence of due care. Due care requires the trustee to discharge fiduciary responsibilities with competence and diligence. Competence is derived from a synthesis of education and experience. It begins with a mastery of a common body of knowledge which is required of all trustees.

Accordingly, trustees have the duty to educate themselves on a continuing basis on all aspects of fund operation, in order to be in compliance with the prudent person/expert standard to which they are called, and to be involved in those functions which require trustee action in the operation of fund business.

social obligation, they will, in the long run, best serve the beneficiaries' interests and most effectively secure the provision of future benefits.

Source: Board of Trustees v. City of Baltimore, 562 A. 2nd 720 (Md. 1989).

Key Word/Key Phrase: Trusts 179, 217.1.

Rule 1.02 *General Welfare. The purpose of a retirement system is to establish a fund so that employees who serve a given number of years may then have an income during retirement, with the resulting beneficial effects upon the employee and the family, the institution they serve, and upon the social and economic welfare of society.*

If retirement beneficiaries are divided into separate classes that bear some reasonable relationship to the objective sought to be accomplished, then pension board trustees should avoid invidious discrimination by treating all persons within the same class the same way.

Interpretations Under Rule 1.02

Plaintiffs, former police officers and others similarly situated, sought recovery of 100% of contributions they had made to their retirement fund during employment notwithstanding that the retirement act provided for only 80% refund of contributions made prior to termination even while other classes of public employees were allowed to recover 100% of contributions.

Because of the special character of police officers and fire fighters, there is a reasonable justification, within legislative prerogative, for providing for a return of only 80% of their contributions if they quit before retirement, and, inasmuch as all persons within those classes are treated the same, there is no unjust discrimination nor denial of equal protection of the law.

Bryson v. Utah State Retirement Office, 573 P.2d 12280, (1978).

Key Word/Key Phrase: Officers 94, Municipal Corporations 189(1), Constitutional Law 238.5.

Rule 1.03 *Entitlement. Property interests are created by existing rules or understandings that stem from an independent source such as state law. These types of beneficiary entitlements should be vigorously defended by trustee pension funds.*

Balancing the real needs versus the perceived needs of plan participants and beneficiaries is crucial to the function of a trustee. The mere request for a favorable ruling by either party does not, in and of itself, justify the act nor does it accord it higher credibility than claims made by others. Decisions must not be

GUIDING PRINCIPLE II

"The beneficiaries of this Pension Fund are Sovereign and the Trustees of this Fund are Ultimately Responsible for Them."

Rule 2.01 *Trustees must remove personal bias and function with total objectivity. Trustees are bound to the principle of fairness, for, by their work, the balance of a member's dedicated career is molded to the obligation of the employer to provide security in retirement.*

Trustees as decision makers must be persons of conscience and intellectual discipline who shall objectively and fairly judge matters that affect beneficiaries of a pension system.

A trustee can be shown to be biased if the trustee does not have the ability to set aside personal feelings in deciding a matter involving a beneficiary of a pension fund.

The prejudice of a single trustee will taint the action of an entire board. To avoid this result the trustee should recuse him or herself from the matter at hand.

Interpretations Under Rule 2.01

An officer injured his back while on duty. He underwent a laminectomy operation, then sought a disability pension contending he was unable to perform light duty due to his need to constantly change his position from standing to sitting, to lying down, all in an effort to reduce his pain.

His supervising officer was a commissioner on the pension fund of which the injured officer was a member. After applying for a disability pension, the officer was suspended from active duty because of an altercation with his spouse. He was assigned to guard his apartment on an eight hour shift and was required to remain in his apartment and complete hourly reports of his activities.

The supervising officer informed the applicant prior to the disability hearing that the "city will run you dry and there is no way they are going to settle or give you anything." At the hearing, the applicant requested that the supervising officer recuse himself from the proceedings. His attorney was restricted from questioning the applicant's supervisor. The retirement board denied the disability pension.

Interpretations Under Rule 2.03

A board of trustees informed a prospective retiree that his unmodified monthly allowance would be \$725.35 and that he would complete 20 years of service on a specific date.

In reliance on the representations of the board of trustees concerning the retirement benefits, the prospective retiree notified the retirement board that he would retire on the date they specified, completing his 20 years of covered service. He submitted his formal resignation to his employer, sold his home and purchased a retirement home in another state.

The retirement board then informed him that his retirement benefit per month would be \$86.78.

The court held that the figures given by the retirement board to the prospective retiree were expressly given to enable him to plan his future retirement. To not bind the retirement board to its word would turn the doctrine of equitable estoppel upon its head if we were to hold the power to correct was operable. An equity as unjust as the one here, if permitted, would defeat our courts' inherent power to seek and to do equity.

Nevada Public Employee Retirement Board v. Byrne 607 P.2d 1351 (1980)
Key Word/Key Phrase: Officers and Public Employees 94, Estoppel 62.2(2), 118.

Where the modification is detrimental to the employee it should only apply if the employee expressly accepts the modification.

Interpretations Under Rule 3.02

A married judge applied for and received a retirement benefit for medical disability. When he retired his pension plan provided that his surviving spouse would receive one third of the monthly benefit being paid to the judge at the time of his death.

After the judge's retirement, the legislature changed the surviving spouse's benefit from one-third to two-thirds. Upon the judge's death, his wife applied for a two-thirds benefit which was denied by the retirement board. The board offered her a one-third benefit.

The decision of the resulting appeal was that a surviving spouse's benefit can be viewed as both a right of the survivor vesting upon the death of the employee as defined at the time of the death of the employee and as a contract right of the employee at the time the employee begins employment. As to the contract right, what vests is a right to have a surviving spouse receive benefits at death undiminished, with the possibility of enhancement.

Thurston v. Judges' Retirement Plan, 876 P.2d 545 (1994)

Key Word/Key Phrase: Officers, Public Employees 101.5(1)

Rule 3.03 *Spirit and Policy. A public employee's retirement act must be construed reasonably to afford employees the benefit they earn. Where appropriate, the entire subject matter and the policy of the law may be involved to aid the board in its interpretations, and the trustees should always construe it so as to avoid absurd results.*

The board of trustees seeking the meaning of ambiguous words used in a statute should seek it by examining every context and by considering the reason or spirit of the law or the causes which induced the legislature to enact it.

Interpretations Under Rule 3.03

A teacher's survivors brought an action for declaratory relief to determine entitlement under a public employees' retirement act. The court determined that the phrase "two years of accredited contributing service" in the public employees' retirement act providing for survivorship benefits, required only that an employee perform the "accredited contributing service" contemplated in a period of two years (the completion of two nine month teaching contracts) and employment was not required to complete two calendar years of employment.

Guiding Principle IV

“Efficient and effective administration and investment management is basic to public pension funds. Misuse of influence, fraud, waste or abuse is unacceptable conduct.”

Rule 4.01 *In evaluating one’s property right, a trustee must be cognizant of each member’s constitutional right that there shall be no taking of property without due process.*

A board of trustees shall provide due process to its beneficiaries. What is guaranteed is fundamental fairness in carrying out procedures instituted by the board.

Under this rule, it is recognized that a pension benefit is property which cannot be impacted without providing due process in an application of a procedure by a board of trustees. Due process requires a hearing. The minimum that must be provided is notice, an appeal process, an answer to a challenge raised with regard to benefits with findings of fact and rationales supporting a board of trustees’ decision, and the ability to provide or receive information. It should not be forgotten that the process is subject to judicial review.

Interpretations Under Rule 4.01

A fireman sustained back injuries during the course of employment. He had served 18 years and had attained the rank of captain. He applied for a service disability pension. The city code provided that “upon application by the member, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty or exposure while in the actual performance of duty in response to an emergency call shall be retired by the board of trustees if *the Medical Board shall certify the member is mentally or physically incapacitated for the performance of duty, that the incapacity is likely to be permanent, and the member should retire.*”

The medical board appointed three physicians to examine the captain. Two of the physicians concluded there was no objective evidence to support a disability claim and voted against a disability retirement. The third physician concluded that the captain was permanently disabled from performing the duties and voted for a disability pension. The board denied the application.

pension legislation that being remedial in nature, it be liberally construed. Since the statute in question makes no distinction between an accidental disability claim being made within the five year period by an active member or a retired member, the proper construction to be given as to who qualifies under the statute is to conclude that both do.

Smith vs. Consolidated Police and Firemen's Pension Fund Commission, 373 A.2d 685 (1977)

Key Word/Key Phrase: Pensions 1, Municipal Corporations 196.

Rule 4.03 **Notice and Hearing.** *Notice and opportunity to be heard are core components necessary to be provided to beneficiaries when benefits may be deprived by the action of a board of trustees.*

Note: This guiding principal is general in nature and conforms to generally accepted provisions of due process in matters of disability and pension administration.

The Portland Plan has specific rules that address these issues: Section IV, pages 21-24, inclusive, of the Fund's Administrative Rules, as amended, dictates the process to be followed (see annex B).

Interpretations Under Rule 4.03

The basis of the member's claim is a deprivation of a proper amount of pension by action of termination of advance retirement payments with a later restoration of regular benefits at a reduced level and without any meaningful notice or opportunity to rebut the fact that the benefit was incorrectly calculated on an incorrect birth date.

When the only notice of a right to hearing is simply to tell someone that somehow, somewhere a hearing is available is nothing more than an exercise of surpassing arrogance by a pension board. Moreover, even if a letter to the retired public employee was notice of a final determination, it is inadequate because it failed to inform an opportunity to challenge the calculation of the benefit and failed to state the birth date upon which the benefit amount was calculated. This did not provide a way of knowing that the date being used might be incorrect.

What the retiree received was far less than the process to which she was entitled. What she really got was the run around. Notice and hearing is required when the fund is potentially depriving a person of a property right.

Guiding Principle V

"Safeguarding the trust of fund beneficiaries is paramount. Conflicts of interest, bribes, gifts or favors which subordinate fund trustees to private gains are unacceptable."

Rule 5.01 *A trustee must safeguard assets for the current and future generations of beneficiaries.*

A trustee's obligation should be to manage a pension fund so as to enable the fund to meet its obligations not only to retirees, but also to those scheduled to retire in the future, members whose pension and annuity rights will be earned over the years of active service.

To exhaust assets of an actuarially underfunded pension system on a single class of beneficiaries violates a fiduciary obligation.

Interpretations Under Rule 5.01

It was determined that continuing cash contributions from a city to a pension fund was crucial to a pension fund being able to operate for the benefit of all classes of beneficiaries. To ensure the continuous flow of these contributions by preventing the bankruptcy of the city required the pension fund to invest pension assets in securities or obligations of the city in an amount that would violate a standard of prudence for a single asset investment.

After careful deliberation, since the trustees had grounds for believing that the alternative to purchasing highly speculative city bonds would be the bankruptcy of their own retirement fund, their decision to make the investment to assure the survival of the entity fulfilled their fiduciary obligations.

Withers v. Teachers' Retirement System, 447 F. Supp. 1248 (1978)
Key Word/Key Phrases: 217.3 (5), Municipal Corporations 220 (9).

Rule 5.02 *Safeguarding Assets. Trustees of a pension fund are charged with statutory and common law duty to exercise fiduciary responsibilities over assets of the fund.*

Trustees should only distribute assets from a pension fund for the benefit of the beneficiaries.

A study showed that while the program may not threaten benefit security, the program could force the Village (employer) to levy over \$1,000,000 in additional property taxes over the 30 year period of the program. The study also concluded that the pension fund would have \$2.4 million less at the end of the 30 year period because of the less than market rate of interest charged.

The fact that the program earned less than market rate of interest alone is *insufficient reason* to hold as a matter of law that the program was an imprudent investment in violation of a fiduciary duty. However, trustees who make this type of investment must show that they exercised ordinary judgment in weighing all the evidence obtained about the projected investment to show that it would be prudent. If this can be proven, then even the trustees may participate in the benefits of the program.

Board of Trustees the Village of Barrington Police Pension Fund v. Department of Insurance 570 N.E.2d 622 (1991)

Key Word/Key Phrase: Pensions 43, 48; Municipal Corporations 187(1); Officers and Public Employees 101.5(1).

Rule 6.02 *Unconscionability and laches. A trustee must act in good faith and with good conscience.*

Laches is an equitable doctrine which requires that the party who seeks equity must do equity. Laches is not found merely because of the passage of time. It will not apply until such time as the party against whom a laches defense is asserted, discovered or should have discovered the facts.

Conscionable conduct requires disclosure of facts and not deliberate concealment of facts germane to the rights of beneficiaries.

Interpretations Under Rule 6.02

A widow of a fireman who died from service-related injuries filed a petition with a retirement board contending that the amount of pension being paid to her was being improperly determined. A statute provided that a widow be paid a percentage "of the current annual salary attached to a classified position to which a fireman was certified at the time of his death."

During the two years after the death of her husband, the board paid the widow a pension based upon current annual salary for the position held by her husband at his death. Accordingly, when the salaries of the various positions were increased in each of the two years, the annuity of the widow was adjusted to reflect the increase in salary. Subsequently the board decided that this interpretation of the statute was incorrect and began to pay the widow only a set percentage of a base salary.

No notice was ever sent by the board to the widow of the change in the interpretation of the statute. The widow waited five and a half years before filing her claim against the board.

The court held that the first interpretation made by the board, reflected in the first two years of pension payments, was the correct interpretation and therefore the widow was entitled to the higher adjusted pension; back payments for the pension not paid and interest on pension benefits not paid.

It was held in the face of the defense of laches asserted by the board, that:

1. in light of the fact that the board had full knowledge of its change in interpretation of the statute and deliberate choice not to convey notice to the widow but to conceal it from her, it would be unconscionable to permit the board to benefit by its concealment by claiming the widow should have known the fact anyway. If the board wished to avoid any delay in contesting the issue

Guiding Principle VII

"Timely and energetic execution of fiduciary responsibilities is to be pursued at all times by pension fund trustees."

Rule 7.01 *A trustee must conform to the standards of care as outlined in the governing provisions of the trust document.*

A trustee of a public pension fund should exercise the same diligence and prudence in the care and management of a pension fund that, in general, prudent individuals of discretion and intelligence in such matters employ in their own like affairs.

Under this rule, one may not merely manage a pension fund as though managing one's own affairs but must also act as one who is familiar with such matters. Thus the exercise of an ordinary person's prudence is not adequate. What is required is conscientious, responsible, good behavior on the part of individual trustees of public funds.

Interpretations Under Rule 7.01

At a board meeting, the chairperson, after regular business had been conducted, told the trustees that another item of business should be considered, i.e., a proposal for an outside service contract. None of the trustees knew that a presentation was to be made at the meeting. None of the trustees participated in the brief discussion of the proposal nor objected to its being a legitimate item of business. There was no discussion by the trustees of the fees to be charged for the services to be rendered nor of the need of obtaining additional proposals. After a brief discussion, the trustees voted unanimously to approve the proposed fees. A contract was later signed that incorporated the approved fees.

The court held that prudence was not exercised by the trustees for the following reasons:

1. The item was not on the agenda.
2. No report or recommendation was received from staff.
3. No draft of a contract was provided or reviewed.
4. No cost analysis explaining the fees for the services to be provided was reviewed.

While it is indeed true that failure to comply with the demands of trustees on the issue of diversification is a breach of an investment manager's fiduciary duty, such result will not be forthcoming if the trustees do not orally or preferably in writing, specifically direct such action. Prudence dictates that the trustees order the diversification and terminate the investment advisor's contract if the order is not carried out. Neither was done in this case.

Lanka v. Higgins, 810 F.Supp. 379, (1992).

Key Word/Key Phrase: Pensions 48, 86.

Rule 7.03 Competence. *When a trustee does not possess the education, experience, or skill required to make a decision concerning any operation of the plan, the trustee, due to the applied prudent standards of fiduciary trust law, has an affirmative duty and an obligation to seek independent counsel in making the decision. The trustee further has an obligation to learn, comprehend and remain abreast of all component aspects relating to the discharge of his or her duties through attendance and participation in classes, workshops, forums, seminars and conferences which afford the trustee the opportunity to obtain the necessary expertise to exercise independent enlightened judgment on matters regarding fund business.*

The failure to seek outside counsel is imprudent when, under the circumstances then prevailing, a prudent trustee acting in like capacity and familiar with such matters would seek such counsel.

A trustee unfamiliar with an unusual or difficult investment is charged with making an independent inquiry into the merits of the particular investment rather than relying solely upon the advice of others.

Interpretations Under Rule 7.03

The trustees of a pension fund approved a loan to a bank holding company. The loan was secured by bank stock. Federal and state regulatory officials closed the bank and the loan was not repaid. The trustees of the pension plan were sued for the loss occasioned.

The trustees approved the loan after a presentation by bank officials. A certified public accountant in attendance at the presentation meeting claimed sufficient training to express an opinion on the loan and testified that no one on the pension fund staff had sufficient training to express an opinion on the loan.

The trustees were held to be in violation of their fiduciary responsibility and it was noted that the trustees under the circumstances were required to make an

LEXICON OF POLICIES

The policies contained herein are incorporated into this Code of Professional Conduct of the Portland Fire and Police Disability and Retirement Fund. These policies relate to the guiding principles enumerated earlier in this ethics document and those guiding principles give rise to the policies included herein.

While the universal application of a single policy that covers all points and benefits all members is impossible to construct, the following policies are taken from several different jurisdictions and are not exclusive to any one particular person or entity. Often times it is the incorporation of several good ideas that produce a document with a winning formula. It is to this end that this Lexicon of Policies is included in this document. While not all encompassing, this document is constructed in such a manner so as to allow us to add policies to this Lexicon if new ones are needed, demonstrated or constructed in the future.

(k) intentionally or knowingly disclose any confidential information gained by reason of the affected person's position concerning the property, operations, policies or affairs of the board of trustees, or use such confidential information for pecuniary gain.

Interpretation of Policy

Determination of Substantial Interest

An individual has a substantial interest in a business entity if the individual:

- (a) has a controlling interest in the business
- (b) owns more than 10 percent of the voting interest in the business entity;
- (c) owns more than \$25,000 of the fair market value of the business entity;
- (d) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the business entity;
- (e) is a member of the board of directors or other governing board of the business entity;
- (f) serves as an elected officer of the business entity; or
- (g) is an employee of the business entity.

NOTE: Any violation with respect to this policy shall be reported to the Board of Trustees Chairperson and shall be acted upon by the Board of Trustees as it deems appropriate.

from ongoing business of potential business, depending on the nature of the communication and the frequency of the violations.

(h) Any violation with respect to this section shall be reported to the Board of Trustees Chairperson within three days of its occurrence and shall be acted upon by the Board of Trustees as it deems appropriate.

- formal litigation procedures;
- internal retreats of the boards with or without advisors or consultants;
- instructional gatherings to develop business acumen.

Due Diligence:

- personal investigatory appearances by board members to the actual site(s) of a prospective venture, could be the operational office of a prospective new advisory, consultant or business.
- this function should be repeated with existing relationships *particularly when* a material change has occurred, such as a change in personnel.

Site Inspections:

- primarily reserved for real estate investments where the trustee must go and "kick the tires," meet the tenants and the property management teams, check out the condition of the building(s) and other data relating to any pro forma items of the investment.

II. Educational Operations:

Conferences

usually week long events of an annual nature dealing with a multitude of topics and current trends and developments in the pension industry;

one of the best forums within which to interact with peers from other jurisdictions (networking);

Workshops and Symposiums

events of two to three days of sessions involving discussions surrounding a single theme or a specific topic or subject matter;

Trustee Training

POLICY ON BUSINESS AND EDUCATIONAL FUNCTIONS

- (a) The policy of the Fire and Police Disability and Retirement Board is to:
1. Reimburse trustees and designated administrative staff and employees for the reasonable cost of accommodations and associated travel expenses incurred in the conduct of the Board's business.
 2. Arrange travel using the most economical means available.
 3. Permit travel upon approval by the Board chairman, direction of the Board, Fund Administrator in the case of staff, or when the travel is appropriated by action of the Board in the Fund's budget.

(b) Purpose.

The purpose of the policy is to:

1. Establish general policies and guidelines for processing education and business travel expenses and determining allowable expenses.
2. Define the procedures for education travel approval, arrangements, documentation and reimbursement.

(c) Procedures.

1. Travel Arrangements.

(a) Travel arrangements shall normally be made directly by the member. Assistance by the Fund's staff is available upon request.

(b) Travel Authorization and Request.

(1) After the trustee or staff member

spouse accompanies the individual and the rate is higher for double occupancy, the amount reimbursed will be only the single occupancy rate. Original hotel receipts must accompany the expense report.

(6) Conference Fee: The Board shall reimburse actual expenses incurred in registering for a conference or meeting at which attendance has been directed by the Board budget or the Administrator in the case of staff training.

(7) Miscellaneous Expense: This category will cover expenses such as valet, tipping, telephone charges by the hotel, taxi or other ground transportation, airport parking of personal car when traveling on Board business and other reasonable expenses while on conference business. Receipts will be obtained when ordinarily given.

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reports, etc. This file will be sent to the applicant approximately a week prior to the hearing. The presiding officer will open the hearing by inquiring whether there is any objection to its admission into evidence. If there is no objection, the file will be received in evidence and made a part of the record.

- (b) A statement, if any, by or on behalf of the claimant may be presented. Following such statement, if any, evidence of the claimant in support of his or her claim shall be presented.
 - (c) Evidence on behalf of the Fund, if any, may be presented.
 - (d) Rebuttal evidence may be offered.
 - (e) Closing arguments may be presented.
- (8) In disability cases before the Board, if it appears to the Board that further testimony or argument should be received, the Board may, at the pleasure of the Board members present, continue the hearing. In disability cases before a hearing officer, if it appears to the hearings officer that further testimony or argument should be received, said officer may, in his or her discretion, continue the hearing.
 - (9) In disability cases before the Board the presiding officer shall excuse all persons from the hearing room except staff, the claimant, the claimant's representative, and shall conduct the hearing in executive session pursuant to ORS 192.660(1)(f) of the Public Meetings Law.
 - (10) The determination or decision on any claim, which is reached after a hearing provided for herein, will be in writing and contain findings of fact, conclusions of law, rulings on admissibility of evidence, if not otherwise appearing in the record, and, if the determination is adverse to the claimant, a citation of the statutes under which the determination may be appealed.
 - (11) Informal disposition may be made of any claim by stipulation, agreed settlement or consent order.

B. Evidentiary Rules

- (1) The burden of presenting evidence to support each criterion for entitlement to service-connected disability benefits, nonservice-connected disability benefits, or pension benefits shall be upon the applicant throughout the

as a result of hernia of the abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B, or pneumonia (except terminal pneumonia) it will be rebuttably presumed that such condition arises out of and in the course of the Member's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. The same rebuttable presumption exists with respect to a Member suffering from heart disease if the Member has five or more years of service with his or her respective bureau when his or her condition becomes disabling.

The presumptions referred to herein may be rebutted only if it is determined, by a preponderance of the evidence, that the Member's condition did not result from service as a police officer or fire fighter.

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