Time Line of Events surrounding the AFSME Pension Issue

1941/1943 — Board of Commissioners authorized to establish, by ordinance, a retirement or pension system or systems for officers and employees of the fire department and police department. The Board was also authorized to establish by ordinance a retirement, or pension system for all other officers and employees of the City of Memphis. Private Acts 1941, ch. 44, §1, subsec.1; Priv. Acts 1943, ch. 157, §1. See also, Memphis City Charter 53. **(See Collective Attachment A).**

1950 — The original version of the Social Security Act did not provide for coverage of employees of states and their political subdivisions. Section 210(b)(6) of the Act, 49 Stat. 625 [now § 210(a)(7), 42 U.S.C. § 410(a)(7)]. The 1950 amendments, however, enabled those states that so desired to bring their employees and the employees of their political subdivisions, including police and firemen, within the Social Security system, provided those employees were not already covered by another retirement plan. 42 U.S.C. § 418(d)(1). Then in 1954, Congress enacted paragraph 3, referred to in paragraph 5(A) above, to provide for the voluntary participation in the Social Security system of state and local employees already covered by a pension plan. Paragraph 3 permits eligible employees in a particular coverage group to vote on whether their state's agreement with the Federal Security Administrator should be made applicable to them. Amendments to the Act authorized the Federal Security Administrator (now the Social Security Administrator) to enter into voluntary agreements with the states, extending coverage to all state and local employees serving in positions that were not covered under a state retirement system on the date an agreement was made applicable to such positions. 42 U.S.C. § 418(d)(1).

1951 — Federal law allowed voluntary Social Security coverage for employees of state government and their political subdivisions. The legal provisions for such Agreement are included in Section 218 of the Social Security Act.

1954 — Congress enacted provision to provide for the voluntary participation in the Social Security system of state and local employees already covered by a pension plan. The new provision permitted eligible employees in a particular coverage group to vote on whether their state's agreement with the Federal Security Administrator should be made applicable to them. The Act, as amended, allowed Social Security coverage for employees in

positions covered by an employer's retirement system, by majority referendum procedure.

Pursuant to an amendment to that agreement, the Social Security Administration allowed a referendum among certain employee groups to determine whether they could vote to be removed from the City's Pension Plan and be added to the Social Security System.

1965 October 19, 1965. Resolution approved by the Mayor and Board of Commissioner appointing Edward Hastey, Secretary of the Pension and Retirement System of the City of Memphis, to conduct a Social Security Referendum for certain employees of the City of Memphis. **(See Attachment B).**

December 14, 1965. Governor Frank G. Clement appoints Edward Hastey as his personal representative to conduct a referendum for the eligible employees of the City who were members of Division B of the Memphis Supplemental Retirement System for the purpose of determining whether or not the aforementioned employees shall have coverage in the System of Federal Old Age and Survivors Insurance, together with the benefits offered by the said Retirement System. **(See Attachment C).**

1966 January 1, 1966. An agreement was made between the State of Tennessee and the City of Memphis to establish a Memphis Supplemental Retirement System (as established by Section 218(d)(6) of the Act. **(See Attachment D).**

April 4, 1966. A referendum by secret ballot was held on the question of whether services in positions covered by The Memphis Supplemental Retirement System should be excluded from or included under the agreement entered into on August 16, 1951, by the State of Tennessee and the Secretary of Health, Education and Welfare, pursuant to Section 218 of the Social Security Act.

1968 April 4, 1968. Dr Martin Luther King assassinated exactly two years following the referendum.

AFSME, finally being recognized as a bargaining unit and being distrustful of the City Administration, elected to opt out of the City's Pension System. The AFSME employees were removed from the City's program and added to the Social Security System, pursuant to such referendum vote of their membership.

1995 A supplemental 457 Plan was set up for the "covered group".

1999

After numerous request and research, the Administration received an opinion from the City Attorney's office to reclassify the Social Security covered positions to a "non-covered position." Based on that opinion, the positions were reclassified "covered" by Social Security so that all new employees [would] be covered by the City's Pension Plan.

March 12, 1999. Jody Sobus, State and Local Coverage, DCS, opines: "Once positions are properly covered for Social Security under the State's agreement [Modification No. 29 to the State's Section 218 agreement], there is nothing in Section 218 of the Social Security Act that allows the continuity of such coverage to be terminated. Social Security coverage continues even though the positions are later removed from under the retirement system, the system is abolished, or the positions are placed under an additional retirement system." **(See Attachment E).**

March 15, 1999. Upon Deputy City Attorney L Kenneth McCown's repeat inquiry of Mary Smith (Social Security Administration – Nashville) and Judy Sobus (Social Security Administration – Baltimore), he reports to City Attorney Robert Spence that both the state and Social Security Administration were acceptable of the City "creat[ing] new pension-eligible positions with the exact same job duties as the Social Security-covered positions and hir[ing] new people in those positions with Pension coverage only." **(See Attachment F).**

August 25, 1999. Richard Harron, Director of Social Security Administration's Division of Coverage and Support, Office of Program Benefits, indicated that section 218(f) of the Social Security Act provides that "[n] o agreement under this section may be terminated, either in its entirety or with respect to any coverage group". Based on this section of the Act, the City's agreement with the State of Tennessee and the Social Security Administration coverage for employees who perform a defined group of services cannot be set aside. "The Ways and Means Committee said it 'strongly feels that the ability to terminate coverage for State and local government employees is inequitable both for the employees who lose coverage and for the vast majority of the nation's workforce who continue to pay into it.'" H.R. Rep. No. 25, 98th Cong, 1st Sess. 18-19 (1983), reprinted in 1983 U.S.C.C.A.N. 236. **(See Attachment G).**

September 7, 1999. In correspondence to former Deputy City Attorney, L. Kenneth McCown, Mary E. Smith, Director, State of Tennessee, Treasury Department, Consolidated Retirement System (Old Age and Survivors Insurance Agency). "The Baltimore Office of the Social Security Administration and this Agency have reviewed the situation and Ms. Judy Sobus, Office of State and Local Coverage, Social Security Administration, consistently has stated that once positions are properly covered for social security under a Section 218 Agreement, **there is nothing in the Section 218 of the Social Security Act, that allows the continuity of such coverage to be terminated."** "...I would suggest that the City of Memphis consider the inquiry closed." (Emphasis added). **(See Attachment H).**

2000 Baker, Donelson, Bearman and Caldwell revisited the issue at the Request of the AFSME local 1733 and determined that by law, "there is no legal basis to even consider the request made by the AFSME Dozen." **(See Attachment I).**

To answer your question, "Can the City contribute to both the Pension and to Social Security?" The following is the response received for the Social Security Administration:

> It is questionable; however, if the City chose to do so, the City is still obligated to continue paying SSA tax City Pension contributions. The employee would be responsible for paying 7.56% for Social Security Tax, Medicare, and 8% Pension contribution.
>
> They would possibly be penalized by the Windfall Elimination Tax reduction in both their City Pension as well as their Social Security benefit.

ter 521 of the Private Acts of Tennessee for 1935, be amended by changing the period at the end of Section 1 thereof to a semi-colon and inserting the following:

"and provided further, that such contract shall be submitted to and approved by the Board of Commissioners of the City of Memphis.

"In the event no contract is entered into by the Board of Education of the Memphis City Schools, as authorized herein, the Board of Education shall designate the bank or banks where all moneys belonging to and collected by the Board of Education shall be deposited, subject to the approval of the Board of Commissioners of the City of Memphis; and it shall be unlawful to deposit any moneys in banks other than those designated by the Board of Education and approved by the Board of Commissioners of the City of Memphis."

SEC. 2. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed: January 21, 1941.

BLAN R. MAXWELL,
Speaker of the Senate.

JOHN ED O'DELL,
Speaker of the House of Representatives.

Approved: January 24, 1941.

PRENTICE COOPER,
Governor.

CHAPTER NO. 44

SENATE BILL No. 116

(By Shelby Delegation.)

AN ACT to be entitled: "AN ACT to amend Chapter 11 of the Acts of 1879, entitled: 'AN ACT to establish taxing districts in this State and to provide the means of local government for the same' and all Acts amendatory thereof, constituting the present Charter of the City of Memphis."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapter 11 of the Acts of 1879, entitled, "An Act to establish Taxing Districts in this State and to provide the means of local government for the same," and all acts amendatory thereof, constituting the present Charter of the City of Memphis, be and the same are hereby amended, as follows:

1. The Board of Commissioners may establish, by ordinance, a retirement or pension system or systems for the officers and employees of the Fire Department and the Police Department and may, likewise, so provide for disability retirement or pension system or systems to cover permanent, partial or temporary disabilities incurred by officers and employees of the Fire and Police Departments. When established, the Board of Commissioners shall determine who may be included as members of said system or systems and whether membership therein shall be compulsory upon the officers and employees of such Departments or optional; and the said Board shall provide the method of making contributions to said pension system funds and whether the same shall be supported and maintained entirely by contributions from the salaries of the members thereof or by contributions made

jointly by the members thereof and by the City. The Board shall determine how the said contributions shall be calculated and accumulated, and shall determine the method of payment, and shall determine who shall be beneficiaries of said pension system or systems. The Board of Commissioners is authorized to make all administrative provisions necessary for the operation of said pension system or systems and to determine how the administrative costs thereof shall be borne. Upon the establishment of a retirement or pension system for the Police Department, the now existing pension plan for officers and employees of that Department may be abolished and upon the establishment of a retirement or pension system for the Fire Department, the now existing pension plan for officers and employees of that Department may be abolished, or the Board of Commissioners may, in its discretion, continue the operation of the now existing Police Department pension plan and the now existing Fire Department pension plan as to any officer or employee of the said Departments, respectively, within designated age limits, or upon any other classification basis, but this provision shall not prevent the Board of Commissioners from continuing payments under the now existing pension plan of the Police Department or the now existing pension plan of the Fire Department to those persons receiving the benefits thereof at the time of the adoption of any new pension or retirement plan nor system or systems for said Departments. Prior to the establishment of such system or systems, the Board of Commissioners may secure from a competent actuary a report of the cost of establishing the same and of the method to be followed in the administration of same if and when established.

2. The Board of Commissioners shall have authority to establish and maintain parking meter zones, to impose charges for use of the streets and other public property for parking, to establish and maintain taxicab stands or zones, to require compensation for their use, and to establish, mark and maintain loading and unloading zones for benefit of abutting property owners, to require said owners to pay compensation therefor, and to adopt and promulgate ordinances, rules and regulations governing said zones and stands.

3. The Board of Commissioners shall have authority to regulate, by ordinance, the use of the streets of the City of Memphis by tow-cars and ambulances responding to automobile and other accidents and casualties, and to prohibit tow-cars and ambulances from responding to automobile and other accidents and casualties unless notified to so respond by the Department of Police.

4. That hereafter all vehicles owned and operated by the various Departments, Divisions, Bureaus and Commissions of the City of Memphis shall have painted in a conspicuous place upon said vehicle the name of the City of Memphis and of the particular Department, Division, Bureau and Commission operating said vehicle and the number assigned to such vehicle by such Division, Bureau, Department or Commission.

5. That the Board of Commissioners shall have authority, by ordinance, to require that whenever a structure or other erection within the City of Memphis is removed, the owner or person removing said structure or other erec-

tion, except when the City of Memphis, in accordance with law, removes same, shall immediately thereafter fill or cause to be filled any excavation, wells, open places, basements or depressions, level with the ground adjacent thereto. It may, likewise, require any owner of land upon which a pond has formed to fill or cause same to be filled level with adjacent land and to require all present excavations, open places, basements and depressions within the City to be filled, in accordance with the provisions of this Act.

6. The Board of Commissioners shall have authority, by proper ordinance, to regulate the use of wells and sewers within the City when used in connection with and as an adjunct to air-conditioning-by-water systems, and is authorized to require the use of cooling towers or evaporative condensers in connection therewith and to prohibit the digging of wells for the purpose of procuring artesian water for use as a cooling medium in air conditioning systems.

7. All taxicabs operating within the City of Memphis may be required to have painted on the side front doors in conspicuous words and figures the taxicab rates.

8. The Board of Commissioners shall have authority to designate the bank or banks where all moneys belonging to and collected by the various departments and divisions of the City of Memphis shall be deposited, and it shall be unlawful to deposit any moneys in banks other than those designated by the Board of Commissioners.

9. Hereafter all persons employed solely by

the City of Memphis or any of its Departments, Bureaus or Commissions, shall be required to live and maintain a residence within the Corporate Limits of the City of Memphis, as now defined or as may be hereafter defined, except that the Board of Commissioners of the City of Memphis may exempt therefrom employees of any Division, Department or Bureau whose duties as employees of such Departments, Bureaus or Commissions require them to perform services for the City outside the territorial limits thereof.

10. Section 2 of Chapter 515 of the Private Acts of 1929, being a part of the Charter of the City of Memphis, shall be and the same is hereby amended by striking therefrom wherever they appear the figures "$500.00" and by substituting in lieu thereof the figures "$1000.00."

11. The Superintendent of the Health Department of the City of Memphis shall have authority and it shall be his duty whenever he deems an emergency to exist requiring it to order an autopsy of any person dying at the John Gaston Hospital under circumstances and with diseases deemed dangerous to the health and welfare of the community.

12. The Board of Commissioners of the City of Memphis shall have authority, by ordinance, to prohibit the operation of trucks on streets designated by it in the City of Memphis and to establish truck routes.

13. Section 4 of Chapter 487 of the Private Acts of 1937, being a part of the Charter of the City of Memphis, shall be and the same is hereby

amended by striking out the period at the end of said Section, substituting a semi-colon and by adding the following proviso:

"Provided, however, that the Board of Commissioners shall have authority, by resolution, to permit the placing of conduits underground in those streets where no conduit districts have been established."

14. Section 8 of Chapter 142, Private Acts of 1935, being a part of the Charter of the City of Memphis, shall be and the same is hereby amended by adding the words "Officers and" immediately before the word "employees" in the first line of said Section, so that said Section shall read, as follows:

"All officers and employees of the Fire and Police Departments shall be subject to removal from office or employment by the Commissioner of Public Safety for misconduct, or failure to perform their duty, or for insubordination, or for the good of the service, and the action of the said Commissioner shall be final."

15. The Board of Commissioners shall have authority, by ordinance, to regulate the sale, use and operation of bicycles upon the streets, highways, alleys and other public places of the City of Memphis and to require all dealers to make reports of sales and purchases of all bicycles. And all ordinances passed prior to the enactment of this Act are hereby ratified.

16. Section 2 of Chapter 599 of the Private Acts of 1939, being a part of the Charter of the

City of Memphis shall be and the same is hereby amended by adding the following at the conclusion of said Section 2:

"By virtue of this Act the City of Memphis shall have authority to divest and vest title to property sold under the hereinafter stated provisions."

17. The Board of Commissioners shall have authority to regulate tourist homes, trailer camps, tourist cabins and other places engaged in the business of providing food, lodging or space to tourists and other travelers, and shall also have authority to regulate outdoor parking lots for motor vehicles, including the power to prohibit their operation in locations where traffic hazards may exist.

18. The City of Memphis is empowered to expend in any one calendar year a sum not to exceed $10,000.00 for the purpose of advertising, in conjunction with the County of Shelby, on billboards or in magazines or periodicals of national circulation and in foreign newspapers, the civic, commercial, agricultural, industrial, historical and educational advantages of said City and County.

19. The City of Memphis shall be and is hereby authorized to expend a sum not exceeding Three Thousand Three Hundred Thirty-Nine and 99/100 ($3,339.99) Dollars to pay for the cost of new stable at its Humane Shelter heretofore erected but the contract for which was, through oversight, not approved by the Board of Commissioners of the City of Memphis.

20. The Board of Commissioners of the City of Memphis is hereby authorized and empowered to provide for the payment in monthly installments, or otherwise, of current or delinquent real estate, ad valorem and personalty taxes assessed and levied by said City on property situated therein, and do all other things necessary to enable and expedite the payment of all such current and delinquent taxes.

21. The City of Memphis shall have authority, by ordinance or resolution, to provide for carrying its own insurance and may create insurance funds and reserve for that purpose.

22. The City of Memphis shall have authority to require the use of gas as fuel in all buildings operated or maintained by the City or which are maintained in whole or in part by taxes imposed by the City of Memphis.

23. The Board of Commissioners of the City of Memphis shall elect the City Engineer upon the recommendation of the Commissioner of Public Works.

24. Section 6 of Chapter 142 of the Acts of 1899, being a part of the Charter of the City of Memphis shall be amended so as to provide that the Board of Commissioners of the City of Memphis shall be authorized to fix the term of office of the members of the Park Commission; the terms of the present Commissioners, however, shall remain as now fixed by said Act until the expiration of their respective terms.

SEC. 2. *Be it further enacted,* That if any one or more sections, clauses, sentences, or parts of this

Act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause or provision of this Act in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SEC. 3. *Be it further enacted,* That all laws and parts of laws in conflict with the various provisions and sections of this Act be, and the same are, hereby repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

Passed: January 21, 1941.

BLAN R. MAXWELL,
Speaker of the Senate.

JOHN ED O'DELL,
Speaker of the House of Representatives.

Approved: January 24, 1941.

PRENTICE COOPER,
Governor.

Purchases of the foregoing items shall be made by the Purchasing Agent after recommendation from the appropriate division director, board, commission or their authorized representative. If the items sought are less than ten thousand dollars ($10,000.00) the purchase may be consummated by purchase order; if the items sought are in excess of ten thousand dollars ($10,000.00), then the purchase must be consummated by written contract signed by the Mayor. (Priv. Acts 1947, Ch. 519, § 12; Priv. Acts 1957, Ch. 116, § 1; Ord. No. 3231, § 4, 8-17-82)

Sec. 51.1. Contracts, bonds, etc., maturing on legal holiday.

Any contract, bond or other obligation due the city or any obligation due by the city or any franchise granted by the city which shall mature upon a legal holiday shall automatically be extended until the next business day. (Priv. Acts 1953, ch. 288, § 1)

Sec. 52. Reserved.

Editor's note—Former § 52 was derived from Private Acts 1929, ch. 406, § 5, and constituted the separability clause of that act and also related to the effect of the act on contracts and franchises existing at that time. The section has been omitted at the discretion of the editor.

Sec. 53. Retirement or pension systems—General authority to establish.

The board of commissioners may establish, by ordinance, a retirement or pension system or systems for the officers and employees of the fire department and the police department and may, likewise, so provide for disability retirement or pension system or systems to cover permanent, partial or temporary disabilities incurred by officers and employees of the fire and police departments. When established, the board of commissioners shall determine who may be included as members of said system or systems and whether membership therein shall be compulsory upon the officers and employees of such departments, or optional; and the said board shall provide the method of making contributions to said pension system funds and whether the same shall be supported and maintained entirely by contributions from the salaries of the members thereof or by contributions made jointly by the members thereof and by the city. The board shall determine how the said contributions shall be calculated and accumulated, and shall determine the method of payment, and shall determine who shall be beneficiaries of said pension system or systems. The board of commissioners is authorized to make all administrative provisions necessary for the operation of said pension system or systems and to determine how the administrative costs thereof shall be borne. Upon the establishment of a retirement or pension system for the police department, the now existing pension plan for officers and employees of that department may be abolished and upon the establishment of a retirement or pension system for the fire department, the now existing pension plan for officers and employees of that department may be abolished, or the board of commissioners may, in its discretion, continue the operation of the now existing police department pension plan and the now existing fire department pension plan as to any officer or employee of the said departments, respectively, within designated age limits, or upon any other classification basis, but this provision shall not prevent the board of commissioners from continuing payments under the now existing pension plan of the police department or the now existing pension plan of the fire department to those persons receiving the benefits thereof at the time of the adoption of any new pension or retirement plan nor system or systems for said departments.* Prior to the establishment of such system or systems, the board of commissioners may secure from a competent actuary a report of the cost of establishing the same and of the method to be followed in the administration of same if and when established.

The board of commissioners are also authorized to establish by ordinance a retirement, or pension system or systems for all other officers and employees of the City of Memphis. (Priv. Acts 1941, ch. 44, § 1, subsec. 1; Priv. Acts 1943, ch. 157, § 1)

***Cross reference**—Existing systems, §§ 73—80, 87—94.

Cross references—Retirement of juvenile court judge, § 315 et seq.; retirement of school personnel, § 1056 et seq.

Code reference—Pensions and retirement, T. 4.

Sec. 53.1. Same—Authority to establish for elected officials and other officers and employees.

The board of commissioners of said City of Memphis shall have power by ordinance to establish a retirement or pension system or systems for all elected officials, including the mayor and the board of commissioners of the City of Memphis and all other officers and employees of said City of Memphis. (Priv. Acts 1951, ch. 377, § 1)

Sec. 53.2. Same—Inclusion of widows and minor children of officers and employees.

The board of commissioners of said City of Memphis shall have power by ordinance to amend the existing or establish a new retirement and pension system or systems for all widows and surviving minor children under the age

CHAPTER NO. 157

SENATE BILL No. 33

(By Shelby Delegation)

AN ACT to amend an Act entitled: "AN ACT to amend Chapter 11 of the Acts of 1879, entitled: 'AN ACT to establish Taxing Districts in this State and to provide the means of local government for the same' and all Acts amendatory thereof, constituting the present Charter of the City of Memphis," being Chapter 44 of the Private Acts of Tennessee of 1941.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapter 44 of the Private Acts of 1941, the caption of which is set out in the Caption of this Act, be and the same is hereby amended as follows:

1. By inserting at the end of Paragraph Numbered 1, in Section 1, the following:

"The Board of Commissioners are also authorized to establish by ordinance a retirement, or pension system or systems for all other officers and employees of the City of Memphis."

2. That Paragraph Numbered 6 of Section 1, be amended by inserting at the end thereof, the following:

"The Board of Commisisoners of the City of Memphis shall also have authority to impose charges upon the users of the City Sewer System where the users thereof do not obtain their water supply wholly from the City of Memphis."

And that Paragraph Numbered 18 of Section 1, be amended so as to read as follows:

"The City of Memphis is empowered to expend in any one calendar year, a sum not to exceed $10,000 for the purpose of advertising in such manner, times, and places as may be determined by the Mayor and Board of Commissioners, and said expenditure may be made in conjunction with the County of Shelby, if so determined by the Mayor and Board of Commissioners."

And that said Act be further amended by adding at the end of Section 1 thereof, a new sub-section reading as follows:

"No house or building in the City of Memphis shall be demolished without a permit from the Commissioner of Public Service, and said Commissioner is authorized to refuse to issue such permits, if after investigation, he finds that such house or building is structurally sound and that there is a need for such building and a probable use therefor."

And that said Act be further amended by adding three new sub-sections to be numbered 25, 26, and 27 at the end of Section 1 thereof, reading as follows:

25. The City of Memphis, in addition to all other powers it now possesses, is hereby authorized, by Ordinance, to impose a tax upon all freight and passenger motor vehicles, including but not limited to any automobile truck, automobile trailer, automobile tractor, electrically operated truck or tractor, bus, or gasoline or electrically operated street railway buses, or any other vehicle of like character which is propelled over the highways, roads, streets and other public thoroughfares of the City, by either steam, distil-

late, gasoline, electrically or other mechanical power and constructed for the purpose of transporting tangible personal property or other property or passengers, whether the same are engaged in interstate or intrastate commerce, as compensation for use of the streets, highways, alleys and thoroughfares of the City. The taxes levied and collected under the authority herein granted shall be applied exclusively by the City to the construction and maintenance of the streets, alleys and thoroughfares of the City.

26. The Board of Commissioners of the City of Memphis shall have power by ordinance or resolution to designate the route or routes to be used by any street railway and any gasoline or electrically operated street railway bus or truck line, or any freight or passenger motor vehicle operated on the streets of the City of Memphis, whether the same is engaged in interstate commerce or intrastate commerce.

27. The term of the City Engineer shall be one year and the City Engineer elected in the year 1943 shall serve until December 31, 1943.

SEC. 2. *Be it further enacted,* That if any one or more sections, clauses, sentences or parts of this Act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause or provision of this Act in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SEC. 3. *Be it further enacted,* That all laws and parts of laws in conflict with the various provisions and sections of this Act be, and the same are, hereby repealed, and that this Act take effect from and after its passage, the Public Welfare requiring it.

Passed: January 26, 1943.

BLAN R. MAXWELL,
Speaker of the Senate.

JAS. J. BROOME,
Speaker of the House of Representatives.

Approved: February 2, 1943.

PRENTICE COOPER,
Governor.

CHAPTER NO. 158

SENATE BILL No. 298

(By Mr. Baird)

A BILL to be entitled: "AN ACT to amend Chapter 685 of the Private Acts of 1929, entitled: 'AN ACT to amend Chapter 644 of the Private Acts of 1911,' being an Act entitled: 'AN ACT to incorporate the Town of Lebanon in the County of Wilson, State of Tennessee; to provide for the government and control thereof; and to provide for the ways and means for the conduct and administration of said Corporation,'" and all Acts amendatory thereof, so as to fix the qualifications of the Mayor and Aldermen, and so as to prescribe certain duties and responsibilities of the Commissioner of Finance and Revenue.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapter 685, of

RESOLUTION

WHEREAS, it is necessary that a referendum be held for the purpose of Social Security for certain employees of the City of Memphis; and

WHEREAS, it is necessary that an officer be designated by the City of Memphis to conduct said referendum; and

WHEREAS, Edward Hastey, Secretary of the Pension and Retirement System of the City of Memphis, is eminently qualified to conduct said referendum:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Commissioners that Edward Hastey is hereby appointed to conduct a Social Security Referendum for certain employees of the City of Memphis.

I hereby certify that the foregoing is a true copy and said document was adopted approved by the Board of Commissioners of Memphis in regular - special session on

OCT 18 1965

Comptroller

Attachment C

TENNESSEE
EXECUTIVE CHAMBER
NASHVILLE

FRANK G. CLEMENT
GOVERNOR

December 14, 1965

Mr. Edward Hastey
Director of Pensions
City of Memphis
143 North 4th Street
Memphis, Tennessee

Dear Mr. Hastey:

Acting in accordance with Federal and State laws and regulations, I am appointing you as my personal representative to conduct a referendum for the eligible employees of the City of Memphis who are members of Division B of the Memphis Supplemental Retirement System for the purpose of determining whether or not the aforementioned employees shall have coverage in the System of Federal Old Age and Survivors Insurance, together with the benefits offered by the said Retirement System.

You will conduct this referendum in accordance with applicable Federal and State laws and regulations, and such assistance as you may need in this work shall be furnished by the Old Age and Survivors Insurance Agency, State of Tennessee, upon request from you.

Very truly yours,

Frank G. Clement
Governor

Dept Copy

AGREEMENT

The undersigned Director of the Department of Old Age and Survivors Insurance Agency of the State of Tennessee, acting by and under authority of Chapter 38, Title 8, Tennessee Code Annotated and Section 4-340 Tennessee Code Annotated, and the City of Memphis, Tennessee, a municipal corporation and political subdivision of the State of Tennessee, acting by and through its lawfully constituted officers, sometimes hereinafter called "political subdivision", in order to extend to employees of said political subdivision (except such as are hereinafter excluded) and to their dependents and survivors, the basic protection accorded to others by the System of Federal Old Age and Survivors Insurance established by Title II of the Social Security Act and Amendments thereto, as authorized by Chapter 38, Title8, Tennessee Code Annotated, hereby agree as follows:

1. Definitions.

For the purpose of this agreement -

(a) The term "employee" means an employee as defined in Section 210(k) of the Social Security Act and shall include an officer of the political subdivision.

(b) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by the State of Tennessee or by a political subdivision thereof.

2. Services Covered.

Except classifications of services as set forth below, as subsections to this Section, this agreement is limited in its provisions to the inclusion and coverage of services performed by individuals as employees of said political subdivision who are members or deemed members of Division A of the Memphis Supplemental Retirement System.

(a) Services performed by an employee who is employed to relieve him from unemployment.

(b) Service performed in a hospital, home, or other institution by an inmate thereof.

(c) Covered transportation services (as defined in Section 210(l) of the Social Security Act as Amended).

(d) Service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of Section 210(a) of the Social Security Act, as Amended, other than paragraph 8 of said Section.

3. Contributions by Employees of the Political Subdivision.

The political subdivision agrees to impose upon its employees as to services covered by this agreement, a contribution with respect to wages (as defined in Section 8-3805 TCA) not exceeding the amount of tax which would be imposed by Section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of the Act, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the "Contribution Fund" in the State Treasury (created by Section 8-3813 TCA) in partial discharge of the liability of said political subdivision under Section 8-3811 TCS; said payments to the Contribution Fund to be made in accordance with rules and regulations of the Director of Old Age and Survivors Insurance Agency. It is agreed and understood that the failure of said political subdivision to deduct such contributions shall not relieve it of liability therefor. It is further understood and agreed that delinquent payments due to said Contribution Fund bear interest at the rateof six per cent (6%) per annum, and that same may be recovered by proper court action against the political subdivision, or may,

at the request of the Director of Old Age and Survivors Insurance Agency, be deducted from any monies payable to such political subdivision by any department or agency of the State.

4. Contributions by the Political Subdivision.

(a) The political subdivision represents that it has duly and legally adopted, and that there is now in full force and effect in said City of Memphis, Tennessee, an ordinance (a certified copy of which is attached) requiring an appropriation (or appropriations) from available funds in its general and/or special funds derived from ad valorem or other sources, which shall be fully sufficient when added to the sums withheld as contributions from the salaries, wages, or compensation for personal services performed by employees thereof covered by this agreement, to equal the total amount due from said political subdivision to said Contribution Fund (employer's and employees' contributions) under applicable provisions of Chapter 38, Title 8, TCA.

(b) As assurance of its ability to pay its share of the contributions which will becomd due and payable to the Director of Old Age and Survivors Insurance Agency under the terms of this agreement, and as assurance that said contributions will be adqauate, the City of Memphis, Tennessee, hereby obligates itself and represents that at all times hereafter there will be maintained in said appropriation or appropriations referred to in subsection (a) above, a sum fully sufficient to pay its share of the contribution due to the Contribution Fund; and that sume (together with contributions deducted from salaries, wages, etc., of employees) will be paid promptly when due, under rules and regulations of said Director of Old Age and Survivors Insurance Agency.

5. Reports - Compliance with Regulations.

The political subdivision agrees that it will make such reports, in such form and containing such information, as the Director of Old Age and Survivors Insurance Agency may from time to time require; and that it will comply with such provisions as said Director of the Social Security Administration may from time to time find necessary, to assure the correctness and verification of such reports. The political subdivision further agrees that it will comply with all regulations adopted and promulgated by the Director of Old Age and Survivors Insurance Agency as necessary to carry out the purposes of said Chapter 38, Title 8, Tennessee Code Annotated.

6. Termination.

The Director of Old Age and Survivors Insurance Agency is authorized to terminate this agreement in its entirety, or, in the discretion of said Agency as to any member of a joint coverage unit, if it finds that there has been a failure to comply substantially with any provision contained in this agreement, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the Director of Old Age and Survivors Insurance Agency and be consistent with applicable provisions of the Social Security Act, and amendments thereto.

7. This agreement made and entered into this _____ day of _____ 196_____, and shall be effective the 1st day of January 1966.

ATTEST:

_____

_____
Director, Old Age and Survivors Insurance Agency, State of Tennessee

_____

BY _____

N O T I C E

TO: All eligible employees of the City of Memphis who are members of The Memphis Supplemental Retirement System .

You are each hereby notified of a referendum to take place on the

_____ day of _____ 1965, between the hours of _____

A.M. and _____ P.M. at the

_____
Place

The referendum will be for the purpose of determining by written secret ballot whether or not the eligible employees of the City of Memphis who are members of The Memphis Supplemental Retirement System shall be included in the System of Federal Old Age, Survivors and Disability Insurance (Social Security) as authorized by Federal and State laws and regulations.

_____
Name

_____
Title

_____
(Month - Day - Year)

BALLOT TO ELECT SOCIAL SECURITY COVERAGE

I, the undersigned member of Division B of the Memphis Supplemental Retirement System, am an employee of the City of Memphis do hereby elect to transfer my membership effective January 1, 1966 from said Division B to the Division A of said System for the purpose of procuring Social Security coverage as provided under Title 11 of the Federal Social Security Act together with the supplemental benefits provided by Division A.

As a condition of such transfer I hereby waive my rights to benefits under Division B.

	/	/	

[redacted]

City of Memphis

Tennessee

April 1, 1966

WILLIAM B. INGRAM, JR.
MAYOR

DEPARTMENT OF RETIREMENT
143 N. FOURTH STREET
Room 518—City Hall

This is to certify that - -

(a) A referendum by secret ballot was held on April 4, 1966 on the question of whether services in positions covered by The Memphis Supplemental Retirement System should be excluded from or included under the agreement entered into on August 16, 1951, by the State of Tennessee and the Secretary of Health, Education and Welfare, pursuant to Section 218 of the Social Security Act;

(b) An opportunity to vote in such referendum was given, and was limited to, eligible employees (as defined in Section 218 (d) (3) of such Act) of such system;

(c) Not less than ninety days notice of such referendum was given to all such employees;

(d) Such referendum was conducted under the supervision of E.W. Hastey duly designated to conduct such referendum; and

(e) A majority of the eligible employees voted in favor of including services in positions covered by The Memphis Supplemental Retirement System under the agreement entered into on August 16, 1951 by the State of Tennessee and the Secretary of Health, Education and Welfare, pursuant to Section 218 of the Social Security Act.

No referendum has previously been held on the question of whether services in positions covered by The Memphis Supplemental Retirement System should be excluded from or included under the agreement entered into on August 16, 1951 by the State of Tennessee and the Secretary of Health, Education and Welfare, pursuant to Section 218 of the Social Security Act.

Done this _____ day of _____ 196____.

_____
Name

_____
Title

ATTEST:

_____

March 12, 1999

NOTE TO: Ms. Mary Smith
OASI Agency, Tennessee

Subject: Memphis Supplemental Retirement System (MSRS)--INFORMATION

We have had several conversations concerning the transfer of certain positions from the Memphis Supplemental Retirement System (MSRS) to the (Memphis) City Pension Plan.

Based on the information provided (see attached), paragraph 17 of the City Pension Plan states that the definition of an employee does not include any employee mandated by law to contribute to the Federal Social Security system. Section 54-05 of the Personnel Manual for the City Pension Plan lists all job classifications that are covered by Social Security. It also states that such employees are not eligible to participate in the City's Pension Plan.

As you know, the City Pension Plan is not covered for Social Security. The MSRS was covered for Social Security under Modification No. 249 to the State's Section 218 agreement. Therefore, the question is whether positions transferred from the MSRS to the City Pension Plan would continue to be covered for Social Security.

Once positions are properly covered for Social Security under the State's agreement, there is nothing in Section 218 of the Social Security Act that allows the continuity of such coverage to be terminated. Social Security coverage continues even though the positions are later removed from under the retirement system, the system is abolished, or the positions are placed under an additional retirement system.

In conclusion, the Social Security coverage of the services performed by employees in MSRS positions for the City of Memphis continues if the positions are transferred to the City Pension Plan. If you have any questions, please give me a call (410-965-7948).

Judy Sobus
State and Local Coverage, DCS

Attachments

City of Memphis

Inter-Office Memorandum

City Attorney's Office
Robert L.J. Spence, Jr.

TO: Robert L.J. Spence, Jr., City Attorney

FROM: L. Kenneth McCown, Jr., Deputy City Attorney

DATE: March 15, 1999

SUBJECT: Social Security Coverage - AFSCME employees

I am enclosing a copy of the memo forwarded to me by Mary Smith in Nashville. She received it from Judy Sobus of the Social Security Administration office in Baltimore. This memo is Ms. Sobus' official answer to our question of whether the employees presently in social security-covered positions can transfer into the Pension plan and get out from under social security.

As you can see from the memo, once a position is covered under Social Security, it remains covered forever. As such, if the existing positions now under Social Security were transferred into the Pension Plan, the employees in those positions would still be covered by Social Security. Since neither the City nor the AFSCME employees want to pay both Social Security and Pension deductions, Ms. Sobus' memo resolves this matter with regard to persons presently employed.

However, the memo does not speak to the issue of future employees in newly created positions not listed as being covered by Social Security. Both Ms. Smith in Nashville and Ms. Sobus in Baltimore stated that the Social Security Administration cares only about positions, not job duties. During my conversations with them on this matter, I repeatedly inquired if the City could create new pension-eligible positions with the exact same job duties as the Social Security-covered positions and hire new people into these positions with Pension coverage only. Both Ms. Smith and Ms. Sobus stated that such a move would be acceptable to both the state and Social Security Administration.

Based on the above, I am of the opinion that the City could create new, pension-eligible positions with the same job duties as the present Social Security-covered positions. New employees moving into these positions would not be covered by Social Security and would be covered under the Pension plan. I do not know if this is something in which either the Administration or AFSCME is interested, but it is the only solution available to the City at present.

If I can be of further assistance in this matter, please let me know.

SOCIAL SECURITY

August 25, 1999

Ms. Mary E. Smith, Director
Old-Age & Survivors Insurance Agency
Tennessee Consolidated Retirement System
Andrew Jackson State Office Bldg. - 10th Floor
Nashville, Tennessee 37243-0237

Dear Ms. Smith:

As requested, we reviewed the letter to you dated June 14, 1999, from Mr. L. Kenneth McCown, Jr., Deputy City Attorney for the City of Memphis, concerning whether certain City employees currently working in Social Security covered positions can be reclassified into newly created, non-covered positions. The positions would be given new titles. However, the employees' job duties would remain the same. The City asked "whether Social Security coverage applies to positions or to job duties."

The modification at issue in this case is Modification No. 249 which covers the Memphis Supplemental Retirement System (MSRS). The City of Memphis wants to transfer certain positions from the MSRS to the City's Pension Plan and terminate Social Security coverage.

Modification No. 249 accepts the Memphis Supplemental Retirement System as "an additional coverage group" and acknowledges the applicability of the State of Tennessee's agreement under section 218 of the Social Security Act (the Act) to "services by individuals as employees" in that group. Rather than using the words "positions" and "duties," the section 218 modification itself uses the phrases "coverage group" and "services," and would seem to apply to both groups and services. The fact that section 218 coverage agreements apply to both "groups" and "services" is also seen by section 218(c)(2) of the Act, which provides that "[I]n the case of each coverage group to which the agreement applies, the agreement must include all services. . .performed by individuals as members of such group." (emphasis added).

What the City proposes to do in order to remove employees from coverage seems to contradict the Act. As you know, section 218(f) of the Act provides that "[n]o agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983." The legislative history of section 218(f) makes it clear that once the services of a group are provided with Social Security coverage, the group and the services performed by the group shall remain covered. The provision prohibiting the termination of coverage was added by section 103 of Public Law No. 98-21, the Social Security Amendments of 1983. The legislative history talks about the deep concern of Congress regarding the growing trend toward termination of coverage by State and local governments. The Ways and Means Committee said it "strongly feels that the ability to terminate coverage for State and local government employees is inequitable both for the employees who lose coverage and for the vast majority of the nation's workforce who continue to pay into the system." H.R. Rep. No. 25, 98th Cong., 1st Sess. 18-19 (1983), reprinted in 1983 U.S.C.C.A.N. 236.

If you have further questions concerning this letter, the staff contact is Judy Sobus, 410-965-7948.

Sincerely,

Richard Harron, Director
Division of Coverage and Support
Office of Program Benefits

cc:
Insurance Programs Team
Atlanta Regional Office

Attachment H

STATE OF TENNESSEE

STEVE ADAMS
TREASURER

STEVE CURRY
DIRECTOR TCRS

MARY E. SMITH
DIRECTOR OASI

TREASURY DEPARTMENT
CONSOLIDATED RETIREMENT SYSTEM
OLD AGE & SURVIVORS INSURANCE AGENCY
ANDREW JACKSON STATE OFFICE BUILDING, 10TH FLOOR
NASHVILLE, TENNESSEE 37243
(615) 741-7902

September 7, 1999

RECEIVED
SEP 1 1999
MEMPHIS CITY ATTORNEY

Mr. L. Kenneth McCown
Deputy City Attorney
City of Memphis
125 North Main Street, Rm. 314
Memphis, TN 38103-2079

RE: Social Security Coverage

Dear Mr. McCown:

Since October 1998, the City of Memphis has been trying to determine how to transfer certain union employees from Memphis Supplemental Retirement System (a covered retirement system) to the City of Memphis Pension Plan (a non-covered plan) and drop Social Security coverage.

The Baltimore Office of the Social Security Administration and this Agency have reviewed the situation and Ms. Judy Sobus, Office of State and Local Coverage, Social Security Administration, consistently has stated that once positions are properly covered for social security under a Section 218 Agreement, there is nothing in the Section 218 of the Social Security Act, that allows the continuity of such coverage to be terminated.

There are two exceptions that allow termination of coverage. One exception applies when a 218 covered entity has been legally dissolved. The other exception applies when there is a change in the employer. For example, a schoolteacher is covered as an employee of school district A, a covered entity. The teacher subsequently resigns to accept a position with school district B, a non-218 entity. His coverage for social security ceases as of same day he resigned his position from the school district A. Neither example applies to the City of Memphis situation.

Furthermore, Article 3 of the Memphis City Code recognizes the Memphis Supplemental Retirement System as a retirement system.

Based on the above, I would suggest that the City of Memphis consider the inquiry closed. However, if you have further questions, please contact me, as it is our desire to assist whenever possible.

Sincerely,

Mary E. Smith
Director OASI

LAW OFFICES
BAKER, DONELSON, BEARMAN & CALDWELL
A PROFESSIONAL CORPORATION
FIRST TENNESSEE BUILDING
165 MADISON AVENUE
SUITE 2000
MEMPHIS, TENNESSEE 38103

(901) 526-2000

FACSIMILE
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TENNESSEE
MEMPHIS
NASHVILLE
CHATTANOOGA
KNOXVILLE
JOHNSON CITY
HUNTSVILLE

MISSISSIPPI
JACKSON

WASHINGTON, D.C.

ALLAN J. WADE
Direct Dial: (901) 577-2235
Direct Fax: (901) 577-0783
Internet Address: awade@bdbc.com

November 7, 2000

Memphis City Council Members
Room 514, City Hall
125 N. Main
Memphis, TN 38103

Re: AFSME Pension Issue

Dear Council Members:

You have requested me to revisit a request made by eleven AFSME Local 1733 workers ("AFSME Dozen") whose jobs were reclassified, at their request, by the current city administration in 1994; they received pay increases at that time. In addition, the AFSME Dozen have requested that they be placed in the City's Pension Plan, as are other Heavy Equipment Operators in other unions, and once included that their pension benefits be "retroed" to their original dates of hire.

This matter has been thoroughly reviewed, investigated and considered by Director Westelle Florez, the Social Security Administration City Council Committees, the City Council as a whole, AFSME, the City Attorney's Office and by current Deputy Director of Human Resources for the City, Charmaine Claxton. All have unanimously concluded, without dissent, that the pension requests of the AFSME Dozen cannot be granted for a number of reasons. Despite the careful and thorough attention given to their request and despite the consensus of opinion about their request, the AFSME Dozen has continued to make the same request for relief to the Council on numerous occasions. With utter disdain for the answer that they have received to their request, the AFSME Dozen have appeared at several Council meetings to make the same request that has been investigated and denied.

Even though several of you have indicated no further action on the part of the Council was warranted or necessary, I volunteered to look at every available option to determine if there was <u>any</u> way the Council could consider their request. This was in no way any endorsement of the Council <u>approving</u> their request, but only an attempt to determine if there was any way the request could be <u>considered</u>.

OPINION

After an exhaustive review of all the facts, various City files, correspondence and history of this issue, it is my opinion that there is no legal basis to even consider the request made by the AFSME Dozen.

M AJW 558069 v1
545650-002 11/06/2000

DISCUSSION

The AFSME Dozen are all represented by the AFSME Union. Many of these employees have more than 15 years of service in various jobs with the City. When AFSME was finally recognized as a bargaining unit by the City in May of 1968, the AFSME leadership, distrustful of the City Administration, elected to opt out of the City's Pension System and to receive Social Security benefits instead. By agreement with the Social Security Administration, City of Memphis employees are not covered by Social Security, but are covered by the City's employee benefit programs, including its pension plan. Pursuant to an amendment to that agreement, in 1966 the Social Security Administration allowed a referendum among the certain employee groups to determine whether they could vote to be removed from the City's Pension Plan and be added to the Social Security System. The AFSME employees were removed from the City's programs and added to the Social Security System, pursuant to such a referendum vote of their membership.

The City has, therefore, made contributions to Social Security for the AFSME Dozen, in some cases for over 15 years. Under Social Security, a tax is withheld from the employees salary and this tax is matched by the employer. Over the years, the amounts contributed to Social Security by the AFSME employees and the City have been equal to:

1985	14.100%
1986	14.300%
1987	14.300%
1988	15.020%
1989	15.020%
1990	15.300%
1991	15.300%
1992	15.300%
1993	15.300%
1994	15.300%
1995	15.300%
1996	15.300%
1997	15.300%
1998	15.300%
1999	15.300%
2000	15.300%

There are several reasons why the Council cannot consider the request of the AFSME Dozen. Because these reasons are so apparent, I will, for the sake of expediting this opinion, exclude legal citations.

First, AFSME is the official and exclusive bargaining unit for the AFSME Dozen. Federal law generally prohibits employers form negotiating directly with employees when they are represented by a union. This rule in some cases does not apply to municipal governments; however, the Council has expressed a policy which prohibits the Council from becoming involved in labor negotiations except in

the case of an impasse. The Impasse Ordinance also evidences a policy that the Administration negotiate only with the Unions or recognized bargaining units. AFSME does not join in the AFSME Dozen's request and in fact have affirmatively stated it will not seek to negotiate this issue. THE AFSME Dozen have not been recognized as a separate bargaining unit. These facts alone make it legally impermissible to consider their request.

Second, even if the request could be legally considered, the AFSME Dozen cannot be included in the City's Pension Plan, retroactively or prospectively, unless such inclusion is permitted by the Social Security Administration. The Social Security Administration has refused to modify its agreement with the City regarding any AFSME employees; in fact, the Social Security Administration has indicated by law the AFSME Dozen cannot get out of Social Security once covered by virtue of an agreement with an exempt municipality. The Social Security Administration has stated the City should consider the matter "closed". So, the AFSME employees by law cannot exclude themselves from the Social Security System.

Third, even if the City/City Council could negotiate with the AFSME Dozen and even if the AFSME Dozen could extricate themselves from the Social Security System, the AFSME Dozen could not be involved in the City's Pension Plan retroactively without causing the City to discriminate unfairly against other employees.

In effect, what the AFSME Dozen has requested is to "double dip"; i.e. their request would enable them to receive an accrued benefit from Social Security and from the Pension Plan. The City has already contributed to Social Security for these employees; retroactive inclusion in the pension plan would require a lump sum contribution to fund an accrued benefit in the pension plan based on their years of service. The following example illustrates the inequity of this request to other employees:

Example, assume an AFSME employee who received a $10,000 salary until 1998 in which his salary increased to $25,000. He retires in the year 2001 at age 55.

Year	Salary	SS%	Social Security
1985	$ 10,000.00	14.100%	$ 1,410.00
1986	$ 10,000.00	14.300%	$ 1,430.00
1987	$ 10,000.00	14.300%	$ 1,430.00
1988	$ 10,000.00	15.020%	$ 1,502.00
1989	$ 10,000.00	15.020%	$ 1,502.00
1990	$ 10,000.00	15.300%	$ 1,530.00
1991	$ 10,000.00	15.300%	$ 1,530.00
1992	$ 10,000.00	15.300%	$ 1,530.00
1993	$ 10,000.00	15.300%	$ 1,530.00
1994	$ 10,000.00	15.300%	$ 1,530.00
1995	$ 10,000.00	15.300%	$ 1,530.00
1996	$ 10,000.00	15.300%	$ 1,530.00
1997	$ 10,000.00	15.300%	$ 1,530.00

1998	$	25,000.00	15.300%	$	3,825.00
1999	$	25,000.00	15.300%	$	3,825.00
2000	$	25,000.00	15.300%	$	3,825.00
Total	$	205,000.00		$	30,989.00

If we assume a similarly situated employee was in the City's Pension Plan, the City would have contributed as follows:

Year		Salary	Pension %		Pension Plan
1985	$	10,000.00	16.700%	$	1,670.00
1986	$	10,000.00	15.300%	$	1,530.00
1987	$	10,000.00	15.300%	$	1,530.00
1988	$	10,000.00	15.300%	$	1,530.00
1989	$	10,000.00	15.300%	$	1,530.00
1990	$	10,000.00	15.300%	$	1,530.00
1991	$	10,000.00	15.300%	$	1,530.00
1992	$	10,000.00	13.300%	$	1,330.00
1993	$	10,000.00	13.300%	$	1,330.00
1994	$	10,000.00	13.300%	$	1,330.00
1995	$	10,000.00	13.300%	$	1,330.00
1996	$	10,000.00	13.300%	$	1,330.00
1997	$	10,000.00	13.300%	$	1,330.00
1998	$	25,000.00	10.000%	$	2,500.00
1999	$	25,000.00	10.000%	$	2,500.00
2000	$	25,000.00	5.000%	$	1,250.00
Total	$	205,000.00		$	25,080.00

As the example illustrates, honoring the AFSME Dozen's request would require the City to make a double contribution to their retirement benefit, one to Social Security, which as already been made and is not recoverable, and one to the Pension plan to catch them up with similarly situated employees. Not only would this be fiscally imprudent, but patently unfair and discriminatory to other City employees. Such a discriminatory action is prohibited by ERISA and the Internal Revenue Code.

I trust I have clearly shown why the City/City Council cannot grant the request of the AFSME Dozen to be included in the City's Plan with retroactively or prospectively. I trust this will put an end to this controversy and provide written evidence that the AFSME Dozen's request has been thoroughly considered and resolved.

Sincerely,

Allan J. Wade

AJW:tcs
cc: The AFSME Dozen c/o Tommy Grayson
Keith L. McGee
Director of Human Resources
City Attorney

M AJW 558069 v1
545650-002 11/06/2000