

DIVISION 2. BOARD OF TRUSTEES*

***Cross references:** Boards, committees, commissions, § 2-26 et seq.

Sec. 54-71. Created; composition; terms of office; meetings; officers.

(a) There is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. The board of trustees shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality, who shall be appointed by the legislative body of the municipality, and two of whom shall be police officers as defined in F.S. § 185.02(1) or deputy sheriffs employed by the county sheriff, who are participants in the fund and who shall be elected by a majority of the police officers who are members of such plan. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board of trustees as its fifth member. The fifth member shall have the same rights as each of the other four members appointed or elected as provided in this section and may succeed himself in office. Each resident member shall serve as a trustee for a period of two years, unless sooner replaced by the legislative body at whose pleasure he shall serve, and may succeed himself as a trustee. However, the terms of the mayor, or corresponding chief executive officer of the municipality, and the chief of the police departments as members of a board of trustees as provided in Laws of Fla. 1953, ch. 28230, as amended, together with any city manager and member of the legislative body of the municipality as members of the board of trustees shall terminate on September 30, 1986. Each police officer or deputy sheriff member shall serve as trustee for a period of two years, unless he sooner leaves the employment of the municipality as a police officer, or the county sheriff's office, as a deputy sheriff, whereupon the legislative body of the municipality shall choose his successor in the same manner as an original appointment. Each police officer or deputy sheriff may succeed himself in office.

(b) The board of trustees shall meet at least quarterly each year.

(c) Each board of trustees shall be a legal entity with, in addition to other powers and responsibilities contained in this article, the power to bring and defend lawsuits of every kind, nature, and description.

(d) The trustees shall by a majority vote elect for its members a chairman and a secretary. The secretary of the board shall keep a complete index book of the actions, proceedings, or hearings of the board.

(e) The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(f) No member of the city commission may serve as a member of the board of trustees of the municipal police officers' retirement trust fund in any capacity. Only two city employees or deputy sheriffs may serve as members of the board of trustees. Provided, however, all current employees now serving shall continue to serve until the expiration of their existing terms.

(Code 1979, § 2710)

Sec. 54-72. Procedure for filling vacancies.

The following procedure shall be used for filling vacancies on the board of trustees of the municipal police officers retirement trust fund ("the board"):

- (1) Where a vacancy occurs or is scheduled to occur with respect to an employee representative on the board, the board shall set a date for election to fill that vacancy. Such date shall be at least 30 days subsequent to the meeting at which the date for such election is determined. The board shall appoint a representative from among its members to assist the city clerk in holding the election.
- (2) The city shall promptly post notices at city hall of the date of the election and the opening of registration for candidates. Candidates for such position shall be permitted to submit their names for election 16 days prior to the date for the election. The city clerk shall provide appropriate forms for registration.
- (3) The city clerk shall provide assistance with regard to advising the board of the occurrence of a vacancy in placing the appropriate notices of election.
- (4) The election shall be conducted by the city clerk in conjunction with the representative chosen by the board.
- (5) The city clerk shall develop a ballot format and mail ballots to all persons eligible to vote in such election. The mailing shall occur not more than 15 days nor less than ten days prior to the date of the election. The ballots shall be mailed to the home address of the employee as such home address is listed in the employee's personnel file. The ballot shall list the names of the persons who are registered as candidates for election.
- (6) All ballot envelopes must be signed by the voter and returned to the city clerk in sealed envelopes prior to 5:00 p.m. on the date scheduled for the election.
- (7) The city clerk together with the representative assigned by the board shall open the ballots promptly after 5:00 p.m. on the date scheduled for the election and tally the results. The opening of the ballots and tallying of the results shall be conducted in city hall and shall be open to the public.
- (8) After tallying the results, the city clerk and the representative of the board shall declare the results of the election and submit them to the city commission at the next meeting of the city commission subsequent to the date of the election.

(Code 1979, § 2710A)

Sec. 54-73. Powers and responsibilities.

- (a) The board of trustees shall have the following powers and authority:
 - (1) Invest and reinvest the assets of the retirement trust fund, as follows:
 - a. The fund may be invested and reinvested without limitation in such securities or property, real or personal, wherever situated and of whatsoever kind as shall be approved by the board, including but not limited to stocks, common or preferred, bonds, and other evidences of indebtedness or ownership.
 - b. The board may retain in cash in noninterest bearing accounts such amount of the fund as it may deem advisable, having regard for the cash requirements of the fund.
 - c. No person or entity shall be liable for the making, retention or sale of any

investment or reinvestment made as provided in this article, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.

d. The board may cause any investment in securities held by it to be registered in or transferred into the name of the fund or into the name of such nominee as the board may direct, or it may retain them unregistered solely to permit transferability, but the books and records shall at all times show that all investments are part of the trust fund.

e. The board is empowered, but is not required, to:

1. Vote upon any stocks, bonds or securities of any corporation, association or trust and to general or specific proxies or powers of attorney with or without power or substitution;
2. Participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities;
3. Deposit stock or other securities in any voting trust or any protective or like committee or with the trustees or with depositories designated thereby;
4. Amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and
5. Generally, to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be the best interest of the fund to exercise.

f. Any of the foregoing powers and functions reposed in the board may be performed and carried out by the board through duly authorized agents, provided that the board shall at all times maintain continuous supervision over the acts of any such agent; provided further, that legal title to such fund shall always remain in the board of trustees.

(2) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this article and the rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, shall be signed by the chairman and secretary or by two other members of the board, and shall state upon their faces the purposes for which the drafts are drawn. No money shall otherwise be drawn.

(3) Finally decide all claims to relief under the board's rules and regulations pursuant to the provisions of this article.

(4) Convert into cash any securities of the fund.

(5) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(b) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this article are vested in the board of trustees; provided, that nothing in this article shall empower a board of trustees to amend the provisions of a retirement plan without approval of the municipality. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund. In furtherance of its responsibilities, the board is empowered and authorized:

- (1) To determine all questions relating to and process all applications for eligibility, participation and benefits.
- (2) To determine and certify the amount of all retirement allowances or other benefits

under this article.

- (3) To distribute at regular intervals to participants:
 - a. A comprehensive plan description booklet; and
 - b. Periodic reports, no less than annually, regarding the financial and actuarial status of the plan.
 - (4) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures.
 - (5) To have performed actuarial studies and actuarial valuations.
 - (6) To make recommendations regarding changes in the provisions of the plan.
 - (7) To require and review reports of and have meetings with the custodian and investment agent or advisor, such reports to reflect fund investment performance, investment recommendations, and overall review of investment policies.
 - (8) To assure that city contributions are deposited into the trust fund at least quarterly, and any other revenue such as state premium refunds are deposited within five days of receipt.
 - (9) To assure that all regular and special actuarial reports are filed with the state division of retirement within 60 days of receipt.
 - (10) To have special actuarial work performed so as to determine the cost of any plan changes or amendments.
 - (11) To establish a uniform procedure for prompt review and rehearing of all claims by members or beneficiaries.
- (c) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.
- (d) In order to effectuate the purpose of the plan, the board shall have the power to construe the plan, to supply any omissions therein, to reconcile and correct any errors or inconsistencies, and to make equitable adjustments for any mistakes or errors made in the administration of the plan, and all such actions or determinations made by the board in good faith shall not be subject to review by anyone.

(Code 1979, § 2711(a)-(g))

Sec. 54-74. Fiduciaries of plan.

- (a) Board members shall be deemed fiduciaries for plan purposes. A "fiduciary" shall be any person or entity who exercises any discretionary authority or control regarding management of the plan or its assets; any person or entity who renders or who has authority or responsibility to render investment advice; or any person or entity who has any discretionary authority or responsibility in administration of the plan. Any person or entity may serve in more than one fiduciary capacity. The board of trustees shall be the plan administrator for the plan.
- (b) All fiduciaries shall discharge their duties under this article solely in the interest of members and beneficiaries, and more particularly as follows:
 - (1) For the exclusive purpose of providing benefits to members and their beneficiaries;
 - (2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(3) By performing their duties in accordance with the documents and instruments setting forth and governing the plan.

(c) It is intended under this section that each fiduciary shall be responsible for the proper exercise of his or its own powers, duties, responsibilities, and obligations as specified in this section or as may be specifically delegated in writing. No fiduciary guarantees the fund in any manner against investment loss or depreciation asset value.

(Code 1979, § 2711(h))

Sec. 54-75. Liability of the board and board members.

No member of the board shall be liable for any loss unless resulting from his or its own fraud or willful misconduct, and no member shall be personally liable upon, or with respect to, any agreement, act, transaction or omission executed, committed, or suffered to be committed by himself as a member of the board or by any other member, agent, representative or employee of the board. The board and any individual member of the board and any agent thereof shall be fully protected in relying upon the advice of the following professional consultants or advisors employed by the board: any attorney insofar as legal matters are concerned; any investment counselor insofar as investment matters are concerned; and any actuary insofar as actuarial matters are concerned.

(Code 1979, § 2711(i))

Secs. 54-76--54-85. Reserved.