

Public Pension Fund Trustee Fiduciary Duties

Trustees have a fiduciary duty to put another persons' interest before their own or those of anyone else.

These duties can be divided into three categories:

1. Duty of Loyalty
2. Duty of Prudence
3. Duty of Care

These fiduciary Duties are ultimately legal responsibilities one of the strictest duties you will find anywhere in law. We as Trustees can not hide behind an Insurance Liability Policy---- just ask State of Florida Municipal Fund Trustees and San Diego County Employee Retirement Association Trustees who are being civilly and /or criminally charged for breaches of their fiduciary duties.

1. Duty of Loyalty – is the obligation to act for the exclusive benefit of the Plan participants. In short, we must put the participants' interest above our own interests and those of any third parties, such s employers, and other political bodies, or taxpayers. The Duty of Loyalty includes following the Anti-cutback Rules – The U.S. Constitution Article 1, Section 10 Limits States power to pass any law impairing the obligation of a contract . The right to a pension has been ruled to be a contractual right as such the terms of retirement and certain other benefits in effect as of the Date of hire – as well as any subsequent enhancements cannot be impaired (cutback) or otherwise significantly changed.
2. Duty of Prudence – the obligation to act prudently in exercising power or discretion over the interests that are the subject of the fiduciary relationship. We must exercise sound judgment, make common sense decisions and act with care. A Trustee cannot do this without availing themselves of Continuing Education and now required under our own New Governance Document. The suggestions that continuing education is some kind of perk is totally wrong. Continuing Education is Mandatory for a trustee to be able to fulfill their responsibility of Prudence. The Prudent Investor rule is a codified rule as set out in the Uniform State Laws (National Conference of Commissioners on Uniform State Laws- NCCUSL), The Uniform Prudent Investors Act of 1944 and The Uniform Management of Public Employee Retirement System Act of 1997, a Trustee needs to read and understand these to fulfill the Duty of Prudence.
3. Duty of Care – The responsibility to administer the Pension Plan efficiently and properly. Under this duty, the Board must in conjunction with Staff, develop, adopt and implement policies and procedures for the administration of the Plan. The New Governance Document is the Guide Book for this Care.

The proper exercise of these fiduciary duties requires that the Board of Trustees receive unbiased and independent information and opinions from both top pension fund employees and attorneys

Recommendation:

That the City of Cincinnati Employees Retirement System retain and compensate the following people independent of the Cincinnati Departments of Finance and Law.

In view of The Board of Trustees need for unbiased and independent opinions; The City of Cincinnati Employees Retirement System's need for an orderly line of succession; the need for a unencumbered, reasonable, and specialized work load for top fund staff; and the fulfilling of The Board of Trustees fiduciary Duties and responsibilities to protect the interests Members of the Fund-----

That an Ordinance be drafted to establish the following positions and The System conduct a search, retain, and compensate them at a fair market rate-- comparable to that of top manager's of other mid-size Public Pension Funds of \$2 -\$5 Billion dollars.

#1 Executive Director

#2 Chief Financial Officer/Investments/ Assistant Director---new hire

#3 Benefits / Plan Manager

#4 Executive assistant to Director

The top 3 positions would constitute the orders of succession.

That an RFP be issued for Independent Legal Council --- that specializes in Public Pension Funds-- to render legal opinions and negotiate contracts

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Resolution That The City Of Cincinnati Retirement System Retain And Compensate Top Employees Of The Fund, Proper Staffing Levels Be Established And That A Management Succession Plan be Implemented

Whereas, the Board of Trustees has fiduciary duties of Loyalty, Prudence, and Care; to act solely in the interests of the Plan Participants; safeguard pension funds ; oversee the investment of those funds; and oversee the administration of the plan; and

Whereas, the Board of Trustees have a need for unbiased and independent information and opinions from top fund Staff; and

Whereas, the staffs need for a unencumbered, reasonable, and specialized work load; and

Whereas, independent legal counsel is not presently in place, serving the interests of the pension fund directly; and

Whereas, studies of pension fund failures attribute improper staffing levels and inadequate salaries as core issues in these failures (inadequate pay prevents the hiring of highly skilled staff); and

Whereas, clear and immediate succession is not in place should key staff quit, retire or otherwise not be able to fulfill their duties;

Now therefore be it;

Resolved: That on the 1st Day of May in the year 2008 the following positions be established independent of the Departments of Law and Finance;

#1 Executive Director

#2 Chief Financial Officer/Investments/ Assistant Director---new hire

#3 Benefits / Plan Manager

#4 Executive Assistant to Director

Resolved: That The Board of Trustees of the City of Cincinnati Retirement System shall commission a salary study for the following positions: Executive Director, Chief Financial Officer, Benefits Manager, Executive Assistant to Director and that said salaries be comparable to Pension Funds with assets of 2-5 billion dollars; and

Be it further resolved: That salaries be properly adjusted based on that study and that the Executive Director, Benefits Plan Manager and Executive Assistant to the Director retain their current positions and that the position of CFO be filled as soon as possible; and

Be it further resolved: A succession is now established: should the Executive Director be unable to fulfill his duties, the CFO shall assume those responsibilities, and that should both the Executive Director and CFO be unable to fulfill their duties, that the Benefits Manager shall assume the duties of the Executive Director; and

Be it further resolved: That an RFP be issued for independent legal services to the fund open to firms specializing in public pension funds.