

Board of County Commissioners Agenda Request

Date of Meeting: May 7, 2024

Date Submitted: April 10, 2024

To: Honorable Chairman and Members of the Board

From: Edward J. Dixon, County Administrator

Subject: Board Direction Regarding Reimbursement for Delinquency Fees from Department of Management Services, Division of Retirement

Statement of Issue:

This agenda item seeks Board direction regarding reimbursement for delinquency fees from the Department of Management Services, Division of Retirement.

Background:

Every month HR and the Clerk's office receive a report from FRS that shows any past due balance. We received this bill out of the blue last fall. This bill is for employment Commissioner Hinson resigned in approximately 2018 and Commissioner Holt in approximately 2011. Randomly, we receive a bill for Commissioner Holt's retirement contributions from 12 years ago. Mrs. Maas spoke with Samantha Harrison with FRS who does not have the authority to solve this problem for us but has been a good resource for explaining their existing processes. Both Commissioner Hinson and Commissioner Holt worked for the School Board and GCBOCC. The requirement is that "someone" notify FRS when they are no longer dually employed. Important to note here that FRS is not notified by the fact that they are no longer receiving payroll contributions for someone, but they say they do not track it that way.

We are required to pay payroll taxes and make FRS contributions; however, this situation is not so clear-cut as per the Clerk's email dated February 3, 2024. Ms. Maas, the previous HR director, had numerous meetings and discussions with County Attorney Knowles and FRS to get some direction on the next steps for resolving this matter. Mr. Knowles indicated to Ms. Maas in conversation that he could talk to our lobbyist, Brian Ballard, and talk with someone higher at FRS (possibly someone in the General Counsel's office to work with us). He provided some older case law showing another county that had a DOAH ruling where the city was required to make the payments, but they were allowed to make the payments over time. That case is not identical to ours. The issue concerns the reasonable expectation of being able to comply with FRS's requirements.

The legal concerns here are:

- How can you charge us late fees for many years for fees you have been accruing but never made us aware of until months ago?
- How can you assign responsibility for this debt to GCBOCC and exclude the School Board when we are not the employer that had the employment change for the employee?
- The money they are billing us for Commissioner Holt is not to reimburse her retirement account. She was not eligible for these contributions towards her retirement because she was already retired. This is FRS's accounting system still accruing the money and them wanting to be paid to straighten out the accounting side.

Analysis:

On September 21, 2023, Mrs. Maas emailed the Clerk's Office (attached) and directed them not to pay the fee because HR was working on this with the Attorney. The Clerk's office paid anyway. The Clerk's office made a significant error in paying this debt for many reasons.

- The BOCC did not approve this payment of over \$160,000.
- The ability to negotiate this situation has been taken away. Now we have no leverage because payment has been made.
- Finance's argument that they paid it to keep the late fees from accruing is ineffective because the late fees continue to accrue.

Fiscal Impact:

\$165,131.75 which has already been paid by the Finance Department. \$82,263.43 is the balance due.

Options:

1. Board direction.

County Administrator's Recommendation:

Option 1.

Attachments:

- Letter From the Department of Management Services
- Emails



CERTIFIED MAIL RETURN RECEIPT REQUESTED
ARTICLE NUMBER: 9214 8901 9403 8350 5818 55

March 5, 2024

MS. JERONDA ROBINSON
GADSDEN COUNTY BOARD OF
COUNTY COMMISSIONERS
5B E JEFFERSON ST STE 204
QUINCY FL 32351

Re: Brenda Holt and Eric Hinson

Dear Ms. Robinson:

The Division of Retirement (division) received the Gadsden County Board of County Commissioners' (BOCC) request to waive delinquency fees that were assessed on Invoice No. 309040 (copy enclosed) in the amount of \$72,251.66. The division determined that the delinquency fees were correctly assessed in accordance with Florida Statutes (F.S.) and there is no provision to waive the delinquency fee.

The Division of Retirement (division) determined that Ms. Brenda Holt began filling an elected position as a County Commissioner with the BOCC effective Nov. 12, 2002, and was correctly reported in the Elected Officers' Class (EOC). Subsection 121.052(3) F.S., states in part:

"Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date.."

Gadsden County School Board (School Board) began reporting Ms. Holt in May 2012 in a Regular Class position resulting in her being dually employed with two Florida Retirement System (FRS) employers in two different classes. In accordance with subsection 121.052(6), F.S., which states in part:

"A member may not participate in more than one state-administered retirement system, plan, or class of membership simultaneously."

Compulsory members of the EOC who become dually employed are governed by subsection 121.052(3)(a), F.S. which states:

"Any elected officer who is or becomes dually employed and a member of the Florida Retirement System or one of the existing systems may elect membership in any system or class for which he or she is eligible. Upon becoming dually employed, the elected officer shall have a period of 6 months to notify the administrator of his or her decision, as provided in subsection (6)."

Ms. Holt had the choice of participating in the FRS Regular Class for both positions while dually employed or participating in the EOC for only her elected position. As a result of her choice to be

reported in the Regular Class with both employers, a letter was sent to the BOCC dated Jun. 15, 2012 (copy enclosed), informing the agency that "If the member terminates her Regular Class position, your agency should report this member as UI." UI is the plan code to report members in the EOC.

On Aug. 12, 2013, Ms. Holt terminated her Regular Class position with the School Board; however, the BOCC continued to report her under the Regular Class although she was employed in only a compulsory elected position. The BOCC did not report Ms. Holt in the EOC as previously instructed. When the division became aware of the error, the division made adjustments from September 2013 through August 2023 to correct the membership class from Regular Class to EOC resulting in billing the agency for contributions of \$127,236.52 and a delinquency fee of \$67,860.67.

Additionally, the division determined that Mr. Eric Hinson began filling an elected position as a County Commissioner with the BOCC effective Nov. 12, 2012, and was correctly reported in the EOC. During December 2019 the Gadsden County School Board (School Board) began reporting Mr. Hinson in the Regular Class.

In accordance with subsection 121.052(6), F.S., Mr. Hinson was provided the choice to participate in the Regular Class for both positions or in the EOC for only his elected position. As a result of his choice to be reported in the Regular Class with both employers, the BOCC was copied on a letter to dated Apr. 13, 2021 (copy enclosed), informing Mr. Hinson that "If you terminate employment with the Gadsden County Board or County Commissioners of the Gadsden County School Board, please notify the Division of Retirement."

When Mr. Hinson terminated his Regular Class position with the School Board on Jun. 22, 2021, Mr. Hinson did not contact the division. The BOCC continued to report him under the Regular Class position although he was employed in only a compulsory elected position. The division made adjustments from July 2021 through August 2023 to correct the membership class from Regular Class to EOC resulting in billing the agency for contributions of \$37,895.23 and delinquency fees of \$4,390.99.

When the contributions are underpaid by an agency, the delinquent assessment is calculated pursuant to subsection 121.71(6), F.S., which states:

"If a member is reported under an incorrect membership class and the amount of contributions reported and remitted is less than the amount required, the employer shall owe the difference, plus the delinquent fee, of 1 percent for each calendar month or part thereof that the contributions should have been paid. The delinquent assessment may not be waived. If the contributions reported and remitted are more than the amount required, the employer shall receive a credit to be applied against future contributions owed."

The agency received Invoice No. 309040 issued on Aug. 18, 2023, for both Holt and Hinson's retirement adjustments in the total amount of \$237,383.58. On Dec. 6, 2023, the BOCC made a payment of \$165,131.75 applied towards Invoice No. 309040. In addition to the delinquent fee assessed for underpayment of contributions, the invoice accrues a one percent delinquency on the unpaid amount each calendar month or part thereof until the invoice is paid in full, as provided in 60S-3.011(2)(b), Florida Administrative Code. As of the date of this letter, the current delinquent assessment is \$7,121.52.

Ms. Jeronda Robinson
March 5, 2024
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This letter constitutes the division's final decision. If you do not agree with our decision and wish to appeal this matter, you may take one of the following actions within 21 days of receiving this letter:

- File a request (petition) for a formal hearing. Your request must state the facts you dispute and must comply with the requirements of Rule 28-106.201, Florida Administrative Code (enclosed), or
- File a request for an informal hearing. Your request must state why you disagree with the decision and must comply with the requirements of Rule 28-106.301, Florida Administrative Code (enclosed). If you do not state the disputed facts in your letter, we will automatically treat it as an informal hearing request.

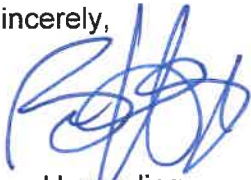
Your request for a formal or informal hearing must be in writing and received by the Department of Management Services, Division of Retirement, within 21 days of your receipt of this letter. The enclosed information page explains the process for the hearings. If you choose to request a hearing, send your written request to:

Agency Clerk and Hearings Coordinator
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, FL 32399-0950
Petitions Accepted by Email at: AgencyClerk@dms.myflorida.com

If you fail to petition for a hearing within the time allotted, you will have waived your right to a hearing and the decision set forth in this letter will become final on the 22nd day after your receipt of this letter.

You may contact Joyce Morgan at 850-414-6371 if you need additional information.

Sincerely,



Ben Hensarling
Deputy Director of Member Services

BH/ssh

cc: Clayton Knowles, Attorney for Gadsden County Board of County Commissioners

Enclosures: Invoice No. 309040
Division Correspondence dated June 15, 2012
Division Correspondence dated April 13, 2021
Appeal Hearings Information Page
Rule 28-106.201, Florida Administrative Code
Rule 28-106.301, Florida Administrative Code

Appeal Hearings Informational Page

Your request for a formal or informal hearing must be in writing and received by the Agency Clerk of the Department of Management Services (DMS) within 21 days of your receipt of the decision letter. You lose your right to a hearing if the Agency Clerk does not receive your request on time.

Send your written request to:

Agency Clerk and Hearings Coordinator
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, FL 32399-0950
Accepted by email: AgencyClerk@dms.myflorida.com

Formal Hearing

If you dispute the facts we used in our decision, state them in your written request for a hearing. Your formal hearing request must meet the requirements of Rule 28-106.201, Florida Administrative Code.

If the Office of the General Counsel (OGC) determines that a formal hearing is needed, they will forward your request to an Administrative Law Judge assigned by the Division of Administrative Hearings. You will be able to present evidence and your argument against our decision, and we will present our evidence and argument.

After the formal hearing, the Administrative Law Judge will issue a Recommended Order to DMS. The OGC will review it and give you a Final Order with the decision.

If you do not state the disputed facts in your letter, the OGC will automatically treat it as an informal hearing request.

Informal Hearing

If you do not dispute the facts we used in our decision, but want to contest the decision, your written request for a hearing must state why you disagree. Your informal hearing request must meet the requirements of Rule 28-106.301, Florida Administrative Code.

If the OGC determines that an informal hearing is needed, they will forward your request to an impartial hearing officer appointed by DMS. You will be able to present evidence and your argument against our decision, and we will present our evidence and argument. After the informal hearing, the OGC will give you a Final Order with the hearing officer's decision.

Procedures for requesting a hearing when there are disputed issues of material fact (formal hearings). Rule 28-106.201, Florida Administrative Code.

28-106.201 Initiation of Proceedings.

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.

Procedures for requesting a hearing when there are no disputed issues of material fact (informal hearing), Rule 28-106.301, Florida Administrative Code.

28-106.301 Initiation of Proceedings.

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any email address, and telephone number of the petitioner, if the petitioner is not represented by an attorney or qualified representative; the name, address, email address, facsimile number, and telephone number of the petitioner's representative; if any, which shall be the address for service purposes during the course of the proceeding;

(c) An explanation of how the petitioner's substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action; and

(h) A statement that no material facts are in dispute.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 12-24-07, 2-5-13.

From: bmaas1170@aol.com <bmaas1170@aol.com>
Sent: Tuesday, February 6, 2024 11:14 AM
To: Laurel Bradley <lbradley@gadsdencountyfl.gov>
Subject: Re: Mandatory FRS Employer Contributions

Hi Laurel,

Certainly we are required to pay payroll taxes and make FRS contributions however, this situation is not so cut and dry as suggested below. I have had numerous meetings and discussions with Clayton and FRS to get some direction on next steps for resolving this matter. The last time we spoke Clayton indicated he could talk to our lobbyist, Brian Ballard and talk with someone higher at FRS (possibly someone in the General Counsel's office to work with us). He has provided some older case law showing another county that had a DOAH ruling where the city was required to make the payments but they were allowed to make the payments over time. That case is not identical to ours. There are many issues with ours that are concerning in terms of a reasonable expectation of being able to comply with FRS's requirements.

Every month both myself and the Clerk's office (Debbie Meeks, i believe) receives a report from FRS that shows any past due balance. We received this bill out of the blue last fall. I don't have the exact date the bill was received but could research and provide if needed. This bill is for a job Hinson resigned from in approx 2018 and Holt in approx 2011 (again i am guessing at dates b/c i don't have my computer with me). So randomly, we receive a bill for Holt's retirement contributions from 12 years ago! I have spoken with Samantha Harrison with FRS who does not have the authority to solve this problem for us but has been a good resource for explaining their existing processes. Both Hinson and Holt worked for the School Board and GCBOCC. The requirement is that "someone" notify FRS when they are no longer dually employed. Important to note here that FRS is not notified by the fact that they are no longer receiving payroll contributions for someone but they say they do not track it that way. So they left the School Board and it appears the School Board did not notify FRS that they left and the individuals did not notify us or FRS that they were no longer dually employed.

The legal concerns here are:

- 1) How can you charge us late fees for many years for fees you have been accruing but never made us aware of until months ago?
- 2) How can you assign responsibility of this debt to GCBOCC and exclude the School Board when we are not the employer that had the employment change for the employee?
- 3) The money they are billing us for Commissioner Holt is not to reimburse her retirement account. She was not eligible to these contributions towards her retirement b/c she was already retired. This is FRS's

accounting system still accruing the money and them wanting to be paid to straighten out the accounting side.

On September 21, my email (included below) directed them not to pay the fee b/c we working on this with the Attorney. They paid it anyway. The Clerk's office made a significant error in paying this debt for many reasons. They are:

- 1) The BOCC did not approve this payment of over \$160,000.
- 2) They took away our ability to negotiate this situation. Now we have no leverage b/c they have already been paid the money.
- 3) Their argument that they paid it to keep the late fees from accruing is ineffective b/c the late fees continue to accrue. Again, this is how there accounting system works.

Let me know if you need additional information or copies of emails and i can get you those.

Becky

On Tuesday, February 6, 2024 at 10:39:21 AM EST, Laurel Bradley <lbradley@gadsdencountyfl.gov> wrote:

rom: nthomas@gadsdenclerk.com <nthomas@gadsdenclerk.com>

Sent: Saturday, February 3, 2024 11:35 AM

To: Ron Green <rgreen@gadsdencountyfl.gov>; Alonzetta Simpkins <Asimpkins@gadsdencountyfl.gov>; Eric Hinson <ehinson@gadsdencountyfl.gov>; Brenda Holt <bholt@gadsdencountyfl.gov>; Kimblin NeSmith <knesmith@gadsdencountyfl.gov>

Cc: Clayton Knowles <cknowles@gadsdencountyfl.gov>; Ed Dixon <edixon@gadsdencountyfl.gov>; Georgette Daniels <gdaniels@gadsdencountyfl.gov>; 'Trudei Porter' <trudeip@gadsdenclerk.com>; rharris@gadsdenclerk.com; dmeeks@gadsdenclerk.com; 'Marcella Blocker' <mblocker@gadsdenclerk.com>; Laurel Bradley <lbradley@gadsdencountyfl.gov>

Subject: Mandatory FRS Employer Contributions

Commissioners,

There are federal labor laws to punish employers who fail to make mandatory contributions on behalf of their employees. There are employee contributions and there are employer contributions. At the federal level, for example, payroll taxes (fica) are mandatory and must be paid.

At the state level, the Florida Legislature sets the FRS rates every year and the Department of Management Services enforces the collection. It is a privilege for Gadsden County to be granted participation in the FRS. We are required to pay the mandatory rates to retain that privilege.

We have paid the mandatory employer contributions for Commissioner's Hinson and Holt based on DMS 10 year Audit of their dual enrollment status. We need the BOCC to authorize the payment of penalties and interest. We had requested that your staff seek a waiver of the penalties and interest but no one ever responded (see email chain).

Nicholas Thomas, Clerk