



AGENDA

**PRESCOTT CITY COUNCIL
SPECIAL VOTING MEETING
Tuesday, March 10, 2015
2:00 PM**

**Council Chambers
201 South Cortez Street
Prescott, Arizona 86303
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Special Voting Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending this meeting through the use of a technological device.

- ◆ **CALL TO ORDER**
- ◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Kuykendall

Mayor Pro Tem Kuknyo

Councilman Arnold

Councilman Blair

Councilman Lamerson

Councilman Lazzell

Councilwoman Wilcox

I. DISCUSSION / POSSIBLE ACTION ITEM

- A. Discussion/possible action regarding authorization to appeal the City of Prescott Public Safety Personnel Retirement System (PSPRS) Local Board eligibility decisions on claims brought by Amanda Misner and Roxanne Warneke to the Yavapai County Superior Court; and regarding authorization to appeal the Yavapai County Superior Court decision regarding Julianne Ashcraft's claim for PSPRS eligibility (Case No. P1300-CV201400726) to the Arizona Court of Appeals

RECOMMENDED ACTION: (separate motions):

(1) MOVE to authorize / not authorize an appeal of the City of Prescott PSPRS Local Board decision regarding William Warneke's

eligibility in PSPRS to the Yavapai County Superior Court.

(2) MOVE to authorize / not authorize an appeal of the City of Prescott PSPRS Local Board decision regarding Sean Misner's eligibility in PSPRS to the Yavapai Superior Court.

(3) MOVE to authorize / not authorize an appeal of the Yavapai County Superior Court decision regarding Andrew Ashcraft's eligibility in PSPRS to the Arizona Court of Appeals..

II. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (ii) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (iii) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (iv) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (v) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (vi) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6));
- (vii) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the

public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _____m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Dana R. DeLong, CMC, City Clerk

MEETING DATE/TYPES: SPECIAL VOTING MEETING 3-10-15

DEPARTMENT: Legal

AGENDA ITEM: Discussion/possible action regarding authorization to appeal the City of Prescott Public Safety Personnel Retirement System (PSPRS) Local Board eligibility decisions on claims brought by Amanda Misner and Roxanne Warneke to the Yavapai County Superior Court; and regarding authorization to appeal the Yavapai County Superior Court decision regarding Julianne Ashcraft's claim for PSPRS eligibility (Case No. P1300-CV201400726) to the Arizona Court of Appeals

Approved By:		Date:
City Attorney:	Paladini, Jon	03/04/2015
City Manager:	McConnell, Craig	03/05/2015

Item Summary

1. Misner/Warneke. The City of Prescott PSPRS Local Board decided that Sean Misner and William Warneke were eligible for participation in PSPRS. An appeal of the PSPRS Local Board eligibility decisions must be filed in the Yavapai County Superior Court no later than March 31, 2015.
2. Ashcraft. The City of Prescott appealed the PSPRS Local Board's decision regarding Andrew Ashcraft's eligibility in PSPRS to the Yavapai County Superior Court of Yavapai County. The Superior Court upheld the City of Prescott PSPRS Local Board's decision in favor of the PSPRS eligibility for Andrew Ashcraft. An appeal of the Superior Court decision to the Arizona Court of Appeals must be filed no later than March 26, 2015.

Attachments

1. Draft Notices of Appeal to the Arizona Superior Court re Misner and Warneke
2. Draft Notice of Appeal to the Arizona Court of Appeals re Ashcraft

Agenda Item: Discussion/possible action regarding authorization to appeal the City of Prescott Public Safety Personnel Retirement System (PSPRS) Local Board eligibility decisions on claims brought by Amanda Misner and Roxanne Warneke to the Yavapai County Superior Court; and regarding authorization to appeal the Yavapai County Superior Court decision regarding Julianne Ashcraft's claim for PSPRS eligibility (Case No. P1300-CV201400726) to the Arizona Court of Appeals

Recommended Action (separate motions):

- (1) **MOVE** to authorize / not authorize an appeal of the City of Prescott PSPRS Local Board decision regarding William Warneke's eligibility in PSPRS to the Yavapai County Superior Court.
- (2) **MOVE** to authorize / not authorize an appeal of the City of Prescott PSPRS Local Board decision regarding Sean Misner's eligibility in PSPRS to the Yavapai County Superior Court.
- (3) **MOVE** to authorize / not authorize an appeal of the Yavapai County Superior Court decision regarding Andrew Ashcraft's eligibility in PSPRS to the Arizona Court of Appeals.

1 PRESCOTT LEGAL DEPARTMENT
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2 Prescott, Arizona 86303
(928) 777-1288

3 By: JON M. PALADINI
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9 Attorneys for Plaintiff/Appellant

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF YAVAPAI

12 CITY OF PRESCOTT,
an Arizona municipal Corporation,

13 Plaintiff/Appellant,

14 vs.

15 CITY OF PRESCOTT PUBLIC SAFETY
PERSONNEL RETIREMENT SYSTEM,
16 an Administrative Body,

17 Defendant/Appellee,

18 and

19 AMANDA MISNER,

20 Applicant/Appellee.
21 _____

)
) Case No. _____
)

) NOTICE OF APPEAL
) Pursuant to A.R.S. §12-901 et seq.
)

22 NOTICE IS GIVEN that the City of Prescott appeals to the Superior Court of Yavapai
23 County the “Local Public Safety Personnel Retirement System” (“PSPRS”) Board’s decision
24 regarding Amanda Misner’s (“Applicant”) entitlement to benefits from the PSPRS. This appeal is
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1 taken pursuant to A.R.S. §12-901 et seq. A copy of the Decision on Claim, dated February 23,
2 2015, is attached hereto.

3 **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

4 **INTRODUCTION**

5 On January 28-30, 2015, the City of Prescott PSPRS Local Board (the “Board”) held an
6 evidentiary hearing to determine Amanda Misner’s application for benefits as survivor of her late
7 husband Sean Misner. The City of Prescott, as the “employer” under the applicable statute,
8 opposed the applicant’s request. At the conclusion of the hearing, the Board voted unanimously in
9 favor of approving the application. The Decision on Claim was received by the City on February
10 23, 2015. This appeal is filed within the 35-day period as provided in A.R.S. §12-904(A).

11 **ISSUES PRESENTED ON APPEAL**

- 12 1. The Local Board’s Decision was arbitrary and capricious and not supported by the
13 evidence.
- 14 2. The Arizona State Legislature has vested the Local Board with the responsibility for
15 deciding all questions of eligibility and service credits, and deciding the amount, manner, and time
16 of payment of any benefits under the system. A.R.S. 38- 847(D)(1). Additionally, the Local Board
17 makes determinations as to the right of any claimant to a benefit and to afford any claimant or the
18 Fund Manager, or both, a right to a rehearing on the original determination. A.R.S. 38-847(D)(3).
19 The purpose of the Public Safety Personnel Retirement System (“PSPRS” or System”) is — “to
20 provide a uniform, consistent and equitable statewide program for public safety personnel who are
21 regularly assigned hazardous duty in the employ of the state of Arizona or a political subdivision
22 thereof” A.R.S. § 38–841(B). The statutory language emphasizes that the PSPRS system was
23 created to benefit public safety personnel who are regularly assigned to hazardous duty.

24 The Local Board is legally obligated to consider any and all PSPRS requirements and
25

determine all questions of eligibility and service credits - which this case involves. A.R.S. §38-847. This cannot mean that they are limited to determining an issue only as framed by the applicant, or relying solely on authorities presented by the applicant to determine that issue. A.R.S. §38-847 specifies the powers of the Local Board:

- To... decide all questions of eligibility and service credits, and decide the amount, manner and time of payment of any benefits under the system. A.R.S. §38-847(D)(1); and
- To make a determination as to the right of any claimant to a benefit and to afford any claimant or the fund manager, or both, a right to a rehearing on the original determination. A.R.S. §38-847(D)(3)

A.R.S. §38-847(E) specifically restricts the Local Board from adding to, subtracting from, modifying or waiving any of the terms of the system, changing or adding to any benefits provided by the system or waiving or failing to apply any requirement of eligibility for membership or benefits under the system. As Board Members, A.R.S. §38-847(C) instructs they “shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.”

The Local Board’s decision did not follow or comply with the statutory requirements set forth above.

3. In this matter, the Applicant had the burden of proof before the Local Board. The Board’s Local Rule (I)4 (Informal Proceedings) provides that the decision must be supported by substantial evidence. See also *Pendergast v. Arizona State Retirement System*, 685 Adv. Rep. 33 (2014) (administrative action must be supported by substantial evidence).

The Local Board’s decision was not supported by substantial evidence.

4. The Arizona statute of limitations set forth in A.R.S. §12-821 provides that “All actions against any public entity or public employee shall be brought within one year after the

1 cause of action accrues and not afterward.”

2 The Applicant’s claims arose more than one year prior to the request for hearing. The
3 statute of limitations bars the requested relief.

4 5. Sean Misner waived his right to claim eligibility in the PSPRS.

5 6. The Local Board has no authority to retroactively place Sean Misner into the
6 PSPRS system. The Board’s power is limited to the statutory authority granted to it. ARS §38-
7 847(E). See *Fund Manager PSPRS v Tucson Police PSPRS Board*, 137 Ariz. 536, 672 P.2d 201
8 (App. Div. 2, 1983) (a board or commission is a creation of statute created for a special purpose
9 has only limited powers and it can exercise no powers which are not expressly or impliedly
10 granted). Nothing in the statute expressly or even impliedly permits retroactive placement into the
11 system.

12 The Local Board’s decision of retroactive eligibility is outside of its powers and authority.

13 7. The definition of "member" is found in A.R.S. §38-842. “Member” means any
14 employee who meets all of the following qualifications:

15 (a) Employee as defined in the applicable statute

16 (b) Full-time paid firefighter

17 (c) Member of an eligible group

18 (d) Regularly assigned to hazardous duty

19 (e) On or after the employee's effective date of participation, is receiving compensation for
20 personal services rendered to an employer

21 (f) Customary employment = 40/hrs per week as a firefighter

22 (g) Engaged to work at least 6 months in a calendar year as a firefighter

23 The applicant failed to prove by substantial evidence that Sean Misner met all of the
24 statutory requirements for membership into the PSPRS system.
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This statement of issues presented for review is deemed by A.R.S. §12-904.A to include every subsidiary issue fairly comprised in the statement.

RESPECTFULLY SUBMITTED this _____ day of March, 2015.

CITY OF PRESCOTT

JON M. PALADINI
City Attorney for Defendant City of Prescott

NOTICE IS GIVEN that the City of Prescott appeals to the Superior Court of Yavapai County the “Local Public Safety Personnel Retirement System” (“PSPRS”) Board’s decision regarding Roxanne Warneke’s (“Applicant”) entitlement to benefits from the PSPRS. This appeal is taken pursuant to A.R.S. §12-901 et seq. A copy of the Decision on Claim, dated February 23,

2015, is attached hereto.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

INTRODUCTION

On January 28-30, 2015, the City of Prescott PSPRS Local Board (the “Board”) held an evidentiary hearing to determine Roxanne Warneke’s application for benefits as survivor of her late husband Billy Warneke. The City of Prescott, as the “employer” under the applicable statute, opposed the applicant’s request. At the conclusion of the hearing, the Board voted unanimously in favor of approving Ms. Warneke’s application. The Decision on Claim was received by the City on February 23, 2015. This appeal is filed within the 35-day period as provided in A.R.S. §12-904(A).

ISSUES PRESENTED ON APPEAL

1. The Local Board’s Decision was arbitrary and capricious and not supported by the evidence.
2. The Arizona State Legislature has vested the Local Board with the responsibility for deciding all questions of eligibility and service credits, and deciding the amount, manner, and time of payment of any benefits under the system. A.R.S. 38- 847(D)(1). Additionally, the Local Board makes determinations as to the right of any claimant to a benefit and to afford any claimant or the Fund Manager, or both, a right to a rehearing on the original determination. A.R.S. 38-847(D)(3). The purpose of the Public Safety Personnel Retirement System (“PSPRS” or System”) is —“to provide a uniform, consistent and equitable statewide program for public safety personnel who are regularly assigned hazardous duty in the employ of the state of Arizona or a political subdivision thereof” A.R.S. § 38–841(B). The statutory language emphasizes that the PSPRS system was created to benefit public safety personnel who are regularly assigned to hazardous duty.

The Local Board is legally obligated to consider any and all PSPRS requirements and determine all questions of eligibility and service credits - which this case involves. A.R.S. §38-847.

1 This cannot mean that they are limited to determining an issue only as framed by the applicant, or
2 relying solely on authorities presented by the applicant to determine that issue. A.R.S. §38-847
3 specifies the powers of the Local Board:

- 4 • To... decide all questions of eligibility and service credits, and decide the amount, manner
5 and time of payment of any benefits under the system. A.R.S. §38-847(D)(1); and
- 6 • To make a determination as to the right of any claimant to a benefit and to afford any
7 claimant or the fund manager, or both, a right to a rehearing on the original determination.
8 A.R.S. §38-847(D)(3)

9 A.R.S. §38-847(E) specifically restricts the Local Board from adding to, subtracting from,
10 modifying or waiving any of the terms of the system, changing or adding to any benefits provided
11 by the system or waiving or failing to apply any requirement of eligibility for membership or
12 benefits under the system. As Board Members, A.R.S. §38-847(C) instructs they “shall not
13 knowingly violate or willingly permit to be violated any of the provisions of law applicable to the
14 system.”

15 The Local Board’s decision did not follow or comply with the statutory requirements set forth
16 above.

17 3. In this matter, the Applicant had the burden of proof before the Local Board. The
18 Board’s Local Rule (I)4 (Informal Proceedings) provides that the decision must be supported by
19 substantial evidence. See also *Pendergast v. Arizona State Retirement System*, 685 Adv. Rep. 33
(2014) (administrative action must be supported by substantial evidence).

20 The Local Board’s decision was not supported by substantial evidence.

21 4. The Arizona statute of limitations set forth in A.R.S. §12-821 provides that “All
22 actions against any public entity or public employee shall be brought within one year after the
23 cause of action accrues and not afterward.”

24 The Applicant’s claims arose more than one year prior to the request for hearing. The
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1 statute of limitations bars the requested relief.

2 5. Billy Warneke waived his right to claim eligibility in the PSPRS.

3 6. The Local Board has no authority to retroactively place Billy Warneke into the
4 PSPRS system. The Board power is limited to the statutory authority granted to it. ARS §38-
5 847(E). See *Fund Manager PSPRS v Tucson Police PSPRS Board*, 137 Ariz. 536, 672 P.2d 201
6 (App. Div. 2, 1983) (a board or commission is a creation of statute created for a special purpose
7 has only limited powers and it can exercise no powers which are not expressly or impliedly
8 granted). Nothing in the statute expressly or even impliedly permits retroactive placement into the
9 system.

10 The Local Board's decision of retroactive eligibility is outside of its powers and authority.

11 7. The definition of "member" is found in A.R.S. §38-842. "Member" means any
12 employee who meets all of the following qualifications:

- 13 (a) Employee as defined in the applicable statute
- 14 (b) Full-time paid firefighter
- 15 (c) Member of an eligible group
- 16 (d) Regularly assigned to hazardous duty
- 17 (e) On or after the employee's effective date of participation, is receiving compensation for
- 18 personal services rendered to an employer
- 19 (f) Customary employment = 40/hrs per week as a firefighter
- 20 (g) Engaged to work at least 6 months in a calendar year as a firefighter

21 The applicant failed to prove by substantial evidence that Billy Warneke met all of the
22 statutory requirements for membership into the PSPRS system.

23 This statement of issues presented for review is deemed by A.R.S. §12-904.A to include
24 every subsidiary issue fairly comprised in the statement.
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RESPECTFULLY SUBMITTED this _____ day of March, 2015.

CITY OF PRESCOTT

JON M. PALADINI
City Attorney for Defendant City of Prescott

PRESCOTT LEGAL DEPARTMENT
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Attorneys for Plaintiff/Appellant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

CITY OF PRESCOTT,
an Arizona municipal Corporation,

Plaintiff/Appellant,

VS.

CITY OF PRESCOTT PUBLIC SAFETY
PERSONNEL RETIREMENT SYSTEM,
an Administrative Body,

Defendant/Appellee,

and

JULIANN ASHCRAFT,

Applicant/Appellee.

Notice is hereby given that the above named Plaintiff appeals to the Court of Appeals of the State of Arizona from the Order entered in this action on the 23rd day of February, 2015. The Order affirmed the decision of the City of Prescott PSPRS Local Board.

RESPECTFULLY SUBMITTED this _____ day of March, 2015.

CITY OF PRESCOTT

JON M. PALADINI
City Attorney for Defendant City of Prescott