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Dear Representative Foote,

You asked the Office of Legislative Legal Services to determine whether state statute prohibits the board of trustees of a municipality's volunteer firefighter pension plan from including a retired fire department member. The "Volunteer Firefighter Pension Act", part 11 of article 30 of title 31, C.R.S., governs volunteer firefighter pensions and the boards of trustees for the various types of plans.

Section 31-30-1104 (1), C.R.S., specifies the composition of the board for municipal volunteer firefighter pension plans. The statute states that in a municipality, the board must consist of the following seven members: the municipality's mayor; the municipality's treasurer or finance officer; two other persons appointed by the governing body of the municipality; and three fire department members of the entire membership of all classes of fire departments serving the municipality who are elected by the fire department members of those fire departments.

Section 31-30-1104 (1), C.R.S., does not expressly prohibit a retired fire department member serve on the board of trustees of a municipal volunteer firefighter pension plan. However, as the statute does not make any reference to retired fire department members, the statute does not expressly authorize the inclusion of such member on the board either. The only type of member specifically referenced in section 31-30-1104, C.R.S., is a "fire department member".

The terms "fire department member" and "retired fire department member" are defined terms for purposes of the "Volunteer Firefighter Pension Act". Section 31-30-1102 (4), C.R.S., states that a "'fire department member' means a volunteer firefighter who is in a fire department that serves a municipality, county, or district and who accrues benefits in the volunteer firefighter pension fund." Section 31-30-1102 (8), C.R.S., specifies that a "'retired fire department member' means 'a volunteer firefighter who is not on active duty and who receives pension benefits from the volunteer firefighter pension fund.'" There is nothing in the definition of "fire department member" to indicate that the General Assembly meant for the term to include a retired fire department member. The fact that the General Assembly created a separate definition for "retired fire department member" and did not include it in the definition for "fire department member" may be further

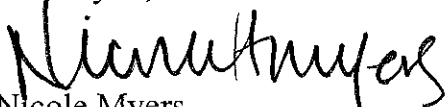
indication that the General Assembly did not intend the definition of "fire department member" to include a retired fire department member.

Similar provisions of law that specify membership on the boards of trustees of volunteer firefighter pension plans for local governments other than municipalities do explicitly state that a fire department member and a retired fire department member may serve on the board. For example, section 31-30-1105, C.R.S., which governs the board of trustees for a volunteer firefighter pension plan in a fire protection district states that "...two individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to active service..." (See section 31-30-1105 (1) (c) (II) (A), C.R.S.) In addition, see section 31-30.5-202, C.R.S., which governs the board of trustees for firefighters' old hire pension funds and expressly allows retired old-hire members of the fire department to serve on the board.

Section 31-30-1104, C.R.S., does not expressly prohibit a retired fire department member from serving on the board of trustees of a municipal volunteer firefighter pension plan, but it does not seem that the General Assembly contemplated the inclusion of a retired fire department member on the board either. If the General Assembly wanted the definition of "fire department member" to include a "retired fire department member," it seems logical that the definition of the first term would include a reference to the latter. In addition, the General Assembly has indicated in other statutes, such as section 31-30-1105, C.R.S., that it can specifically authorize a volunteer firefighter pension plan to include a retired fire department member, yet the General Assembly did not specifically include retired fire department members in the board composition for municipal volunteer firefighter pension plans. It is possible that the governing body of the municipality in which the volunteer fire department is located could appoint a retired fire department member as one or two if its appointees to the board, but there is no requirement for the governing body to do so. For these reasons, the Office of Legislative Legal Services recommends that General Assembly amend section 31-30-1104, C.R.S., to expressly allow a retired fire department member to serve on the board of a municipal volunteer firefighter pension plan if such plans want to guarantee that a retired fire department member serve on its board of trustees.

If you have any questions, please feel free to contact me at 303-866-4326.

Thank you,



Nicole Myers