

Steven Barry:

... And recognize my friend from the News Journal, Jim Little. Apologize for not getting back to you last week when he reached out about some quotes for the article about it. We've talked a lot over the years, you've been there a number of years now, and I've always been, I think, very cordial and friendly with you, but I've also been clear, I'm never going to do an interview with you or give you quotes about something related to my colleagues, which I never do. And also about something controversial that hasn't come to our board yet. No matter how good of an idea or poor of an idea, I can't accomplish anything without being able to get a couple of votes up here. Especially when I've asked to bring some things forward that I'm aware is going to be controversial.

Steven Barry:

I feel like I owe it to bring my conversation to you. It's your support, it's your votes that that I need to be successful with my ideas. And so, just along those lines, that's the only reason I didn't try to wage a preemptive battle in the News Journal about the item. I certainly have some issues maybe with the way the articles were put together, but I wanted to save my discussion for here with my colleagues, again.

Steven Barry:

So one of the things that Commissioner May and I have talked a lot about since being elected is fairness and equity. And we talked about it in dozens of instances about a number different items over the eight or nine years. I, after finding out about the issue, and there's a lot of backup, and part of that, you can see when I became aware of what the terms are related to the program, it was in the October, 2019 time frame. So I requested at that time to be able to opt out and participate in the program and that was denied because it wasn't within six months of taking office. There's a time limit for the elected officials participation. However, the senior management class participation, there's not a timeframe for that. They could elect to opt out of FRS and into this program at any point in time after they become eligible.

Steven Barry:

So there's no timeframe tied to their service, just once they're eligible, they're eligible. So over that 18 months or this 18 month timeframe, I tried to figure out how to be able to bring the item forward. It did go in March and I wanted to get an opinion from the ethics commission about my ability to even bring the item. Because if that discussion had gone differently, we wouldn't be discussing it tonight. There would be no news because it wouldn't be something that I could even bring up. But in this instance, it was found that I could bring it up. So it's me over this 18 months that has tried to navigate this path and we've ended up here, but there is a much larger class than just myself. The potential class does include four of our colleagues and that does include Commissioner Underhill.

Steven Barry:

There would be limitations on his participation immediately, but in the future, those limitations might be different if at any point in time he's not in FRS, and he took the same path that other employees could take, which would be convert from pension to investment. And then once you're not a part of the FRS anymore, then he would be in the same class that four of us are in. And I understand his not wanting to do that, that's certainly his right, but it's the four of us outside of Commissioner Bender that are in that class. But the much larger pool is the dozen employees that would also be eligible, and unfortunately a number of them have been eligible for a long time. Many of them, 10, 15, 20 years, and weren't made aware of any of the details of the program.

Steven Barry:

As Ms. Rogers brought up, she brought up a couple of forms, or one form that Commissioner May and I filled out. So I haven't seen Commissioner Mays', but I presume it to probably be checked the same as mine. And it's a one page form that says you have the potential to opt out and participate in a local annuity program. Candidly, I did ask. I have 22 years experience as a certified financial planner. I have dozens of clients that have retired out of FRS. I'm very familiar with the investment and pension programs. No familiarity with the 401(a). I've never done work for any elected official that participated in it.

Steven Barry:

Candidly, I've talked to many elected officials since the item came up in October of 2019, and have yet to find one that was aware of it, other than the one former board member that participated. So it does say that, and I asked, what does this mean? What exactly is this? Well, it just means you're permanently not in FRS anymore. Oh, okay. I guess I don't want to do that. Nah, probably not. Okay. And then the item in 2016, where we voted on an extension of the contract for ICMA, which is the provider of the 401(a) program. If you go and look at the backup in the contract it's a very legal document, but there's no reference to these tables. There's no reference to the disparity in employer contribution. Where it talks about contributions, there's two asterisks that say contributions are based on FRS tables.

Steven Barry:

A reasonable person would read that and presume that the contributions would be the same as your FRS contributions. That's what a reasonable person would assume by reading that if they're not given any other information. So we've got the issue as it relates to a number of us. But like I said, there's a larger number of employees that may have been eligible for years and years, that didn't have, that weren't informed of the terms of what the 401(a) actually meant. And just the existence of the program is not being reasonably informed of what the benefits are, it's the employer contribution disparity that is so great. Going back to mine and Commissioner Mays' beginning of public service, it was about a four multiple for the employer contribution disparity. There'd be about four times it going to the local annuity program. That number has grown to about a six time disparity.

Steven Barry:

Along those years, the senior management numbers have correspondingly been about four times, seven, eight years ago, but they're about six times the employer contribution now. And I'm not stating that any of my colleagues are going to pursue this, or want to. I'm not stating that any of those senior management employees are going to switch to the investment plan, or maybe an investment plan, I don't know. But if they're in the investment plan and then they're eligible and they want to opt out, I'm not saying any of them are going to choose this path either. But they should have the right to make that informed decision on their own, not have it made for them defacto by not being informed of it. That's not fair and equitable to me.

Steven Barry:

The value of the plan, there's not any increased expense to the county for participants in the plan. If we have, currently, Commissioner Bender, or in late 2018 or 2019, I'm not sure when you enrolled, but back to the data, when I found out in 2019, Robert was the commissioner participating. I don't begrudge Robert, I applaud him for participating. That's great. He was aware of the imported contribution disparity. That's great. That's a long timeframe from 1997 to him, to have one kind of participant as a

board member. And there's a rule with FRS that if you're receiving FRS retirement benefits, then you're precluded from participating in another FRS program. So the likelihood would certainly be with that former commissioner that they were forced into this because they could not elect one of the FRS options because they were already drawing FRS from their work career.

Steven Barry:

So I think it's just a fairness and an equity thing. Folks should have the opportunity to base it on their situation and their families, what they're comfortable with. And they should be making the choice with all the information that's provided to them. That being said, there's not any of those senior management people that have urged me to do it either. I knew that Mike would need to take some criticism for bringing it forward. But still, back to the fairness and equity, I think it is fair and equitable for us to have this discussion. I think it's reasonable. When you understand the employer contribution disparity parts of the program, you understand why, Madam Administrator, each one of her hires that has been eligible is participating in the program. Every one of them. Just like Commissioner Bender.

Steven Barry:

I don't begrudge them for participating in the program. They've been made aware of it, they see the value in it, they see this disparity, so they jump right into it. The plan's been in place 25 years. More than half of the total participants that have taken part in it have enrolled in the last two years. So it just tells me for some reason, unknown to me, we've not done even an inadequate job. It almost feels as an intentional job, but I don't know what the intent would be. Like I said, there's no difference in the expense to the county. Commissioner Bender's salary is budgeted the same as ours. His retirement, previous to mine and Commissioner May's participation currently, Commissioner Bender's budgeted expense to the county was the same as all of ours. So there's not any additional expense to the county. Why in the world was it not something that was used as a recruiting tool? Made very aware to people?

Steven Barry:

I'm, candidly, also disappointed that since the issue has come up towards the end of 2019, and we have had nine or 10 of Administrator Gilly's hires get into the program, I'm disappointed that we still had those 10 or 12 previous and existing employees that were eligible, that weren't brought in and notified, Hey, look, you were actually eligible five years ago, but you're still eligible now. These are the terms of the program. You may or may not want to do it. You may have too many years for it to make sense to you. And I realized that everybody's situation is different, but that doesn't seem fair and equitable to me either. They should have the opportunity to assess whether they participate or not based on the best information that's available. And I feel like that's been a responsibility that the county has had that, as a county, we have clearly failed to do, even if it's just the non attention to it.

Steven Barry:

And maybe there was no intent. I don't understand why this wouldn't be seen as such a great thing that they would be excited about telling you, Hey, something you don't know, Commissioner? You're actually eligible for this now. And you were looking at participating in an investment plan. There's no additional benefits to the investment plan. And if you consider opting out and looking at this, your multiple is going to be this. That is what you would hope would be the intent. And when you have directors that become eligible for it, you know what? Congratulations. You just got a raise and now you're part of the senior management class. You're going to be eligible for this other retirement plan that, again, doesn't cost the county any more money, your participation. But these are the terms of it. You may or may not want to

take a look at it. We're not here to give you financial advice, but these would be the tables that you would be due if you did participate. Why don't you take a little bit of time and think about it?

Steven Barry:

In my opinion, I think those are very fair and equitable things. Again, no staff, although the staff number of people that are potentially eligible is much larger than ours on the board. None of them pushed me to do it either. I think it's fair and equitable and I appreciate you guys taking up the discussion tonight, regardless of how it goes. And again, I apologize, Jim, on not getting back with you last week. But as I've said for a number of years, I hope we've built a relationship where you can understand those two parameters. I want to save my content and my discussion for my colleagues, who I'm going to be asking for their support for something. So I'll try to do the best that I can to answer questions and see how the discussion goes.

Doug Underhill:

Thank you, Mr. Chairman. I've been read on with a number of corporations over the years as a consultant, and where there's benefits, they always say the same thing. In fact, I was just read on recently and said the same thing 20 times in one zoom meeting. It is not the employer's responsibility to give financial advice. It is not the employer's responsibility to give financial advice. Now, it is the employees responsibility to ask the hard questions, to think through these things. Commissioner Bender, I think I read somewhere that it took you five months to make a decision. That's the approach-

Doug Underhill:

The vendor. I think I read somewhere that it took you five months to make a decision. That's the appropriate behavior of an employee properly looking after their interests. The idea that I'm having the biggest struggle with here is that if an employee, any employee in the county, has an issue with the way that their benefits were handled, there's processes for that within the county. File your complaints with HR, work through HR, come up with an appropriate resolution. If you're unable to come up with a resolution and you believe that you've been wronged you hire an attorney and plead your case. And when you plead your case, it would be appropriate that the county would plead its case to the contrary. The struggle that I have with this event is the first that I ever heard that we were having this discussion was when I saw the video in front of the ethics commission in which there were a number of material misstatements of fact, not the least of which was the speaker was speaking on behalf of the other four commissioners.

Doug Underhill:

In order to make that statement you would have to have come before this board and we could have had that discussion. I don't know that it would gone very well, but I mean the appropriate time would have been long before a trip to the ethics commission. If we are in dispute between an employee and the county, it's the county attorney office's responsibility to stand for the equities of the people that Escambia County. We're talking about a get right, a couple of different terms that have been used of making people whole for decisions that they made in the past. There is no making it whole, we're talking about a settlement where we have no legal case to settle. There is not a documented dispute for us to settle, and in order to have a settlement you would have to have a documented dispute where the parties on either side would be able to articulate the facts so that we find out if there is in fact a getting right that has to happen.

Doug Underhill:

I don't think that that's even remotely what has happened here and I struggle with the idea that... Certainly, if we're going to talk about whether or not somebody was informed or not, that's fine, but the idea that there is a need to make somebody whole, where those dollars would be coming out of the general fund and going into the pocket of a commissioner, whether it be me or any other elected official, is beyond preposterous to me and something that I simply cannot imagine that we are at that place in our society. Now, obviously I have fairly libertarian leanings on these things and don't believe that we should be entitled to any benefits of our office after the last day of service to include any kind of retirement. Well, obviously that's not very popular and as long as, I guess, the people that are making the laws are the ones that are benefiting from them we'll continue to have that, but there's just no way to make it right to take cash out of the pockets of the taxpayer and put it in our pockets first and foremost.

Doug Underhill:

But secondly, it's insane that where we talk about on this day as every day, almost that we meet, we talk about the disparity between the haves and have-nots. How do we have such a lucrative deal only available to the most senior people and certainly only and uniquely available to elected officials as we vest very, very quickly? I think the only appropriate action of this board tonight would be to eliminate this perk. That is, that it only supports and only benefits the most senior among the public servants here, including ourselves. If we're truly leading from the front the appropriate motion tonight would be to eliminate the 401 Alpha and put us at the same playing field as all of those employees sitting out there, from the person taking out the trash up through the directors and department heads. Thank you, Mr. Chairman.

Robert Bender:

Any other discussion?

Lumon May:

No, Commissioner [inaudible 00:19:12], when you say equity and fairness, that's what I believe. I believe it should go from the custodian to the commission in our service and I applaud you for being courageous enough to first to make sure that it's legal and it meets the guidelines in which you follow that protocol. And so, I never would do anything or support anything that's not ethical and that's not moral and not legal. And so, unfortunately, many others would have their opinion, but those who dedicate their life to public service deserve to be compensated, whether you're working in a community center or whether you work in the Parks and Rec or whether you serve as the board of county commissioners.

Lumon May:

And so, quite frankly, in my opinion, this action, it's not about county commissioners. It's about those employees who have served in the dark without knowledge of this program and that they should have the opportunity to exercise any retirement benefits, not for themselves, but the sacrifice that they made for their children and those they may leave upon their death and their retirement. So I will second your motion if that's a motion.

Steven Barry:

I'm certainly at some point in time going to move items A through G, but I wasn't sure how the discussion would go or what would be [inaudible 00:20:27]. I'll wait my turn, certainly, but-

Jeff Bergosh:

Yeah, and I get it, where you're at. And I have a lot of questions and I'll be speaking with the attorney a lot because when I was brought in, I'm trying to think back to when I was brought in five years ago, it was a pretty quick process. You'd go in... At that particular point, I don't even remember who she was, but it was one of the staff members. I don't think she's here any longer. And I got a package of paperwork and when it came to the retirement plan, I was already in the FRS program. I was already vested because I had 10 years in at that point. And when I got into the FRS in 2006 the vesting period for me was six years. So I had 10 years in. I was vested in the pension plan, which is a very generous plan. Most companies don't offer them anymore. So I had no idea and I knew about the FRS Investment Plan, I just didn't think it was that great, and I liked the idea of a fixed rate of return at the end when you finish your service.

Jeff Bergosh:

But it will say this, that I have no memory of anyone mentioning that plan to me. Sitting at 10 years, I had the pension if I wanted it. I could have potentially put it on hold. I don't know what my options would have been because I wasn't told. So my issue is, Robert, you're a smart guy and you came on a couple of years after me and you did your homework and kudos to you for that, but in reading the paper it took you a long time to find out. I'd like to know more about that because Steven wasn't told, [Luman 00:22:03], I wasn't told.

Jeff Bergosh:

Setting aside the argument about, "Is it too generous of a benefit?" Setting that aside, the folks that are working here for a decade or two decades who were never told about it. I think that's a disservice. Again, the cost associated with funding their pension through FRS or their investment plan or this plan, they're the same. These are the contribution rates that we make to the state, so if folks we're not told about it I want to know why. I don't have a time machine, I can't make that right, but I want to know why and I want to know if it was on purpose. Because if it wasn't on purpose... Robert, how did you find out? You took five months to make the decision. How did you find out about it? Tell me your experience. Five months, I didn't mind in five minutes because I didn't know there was a 20% or 30% or 40% or 50% return option. Maybe I would've made a different choice. Tell me about your experience.

Robert Bender:

Sure, so during the onboarding process he gave me the paperwork and so I started doing my research. I didn't know if I wanted pension or FRS. This is my... I'm doing this full-time, I don't have another job. About fell out of my chair when I showed what the county was putting towards retirement though, I'll say that. I had no idea that was occurring, but it is set by the state. It is not something set by us. And so as I started going through the paperwork, I found the charts that I think some people have seen now and reading through that, it shows on the back the amount.

Robert Bender:

So, the first page shows the employee and the employer contribution rates for each class. And then on the fourth page it shows for the investment plan, which was when I went through FRS on their website and I did their questionnaires, they said that the pension plan was not the right fit for me, that I would like the investment plan. So I'm looking at those numbers, it showed of the percentage on the first page, how much of it hit your account.

Robert Bender:

And so, I asked HR about it and they said, "We believe that to be true, but you needed to contact FRS." Contacted FRS, and I asked them, I said, "Page one shows this, page four shows this, and is that true?" And they said, "Yes." I'd also say at the time, the information that HR gave me was that there was not a commissioner rate, that there's not an elected official rate. That I would be at the senior management level-

Steven Barry:

They were wrong.

Robert Bender:

Well, I didn't know that. But still, what the senior management was-

Steven Barry:

At least you got paperwork, a packet of paperwork.

Robert Bender:

Well-

Steven Barry:

I mean, that must've changed over a six year period, because there was no packet of paperwork and there can't... I'm sorry, Robert.

Robert Bender:

Yeah. And so, I said that, yeah, I'll take the senior management level, which is I think about 24. 24, 26 at the time. And then they made, five months in, they make the change, and then shortly thereafter we have to start pulling together, like I got in the mail yesterday, the financial disclosure form. So I had to log into the account to see the balance. And I noticed the contributions and I thought they were high. And so I contacted payroll and said, "I think you're putting in too much. I was told that I was making this percentage and you're putting in this percentage." At which time I was informed that the board had previously, in the last agreement, stated that the contribution rate would it be the same as FRS. So that's how it came about for me.

Jeff Bergosh:

Well, that's an important thing to know, because it sounds to me like [Luman 00:26:17] and Steven and myself, it was a pretty quick deal. And for me, my... Like you said, everyone's situation is different. I came with some time accrued already, so for me, it made 50% per year, I don't know. But it just seems like I didn't know that. But the pension for me I believe was the right option, so I wasn't looking too hard behind it, but for someone coming in new, like you, I'm glad you found out about it. I'm glad you know about it. I just feel for people if they were not told, if they were not told about it. And I read cover to cover, this. Cover to cover. You put it together, emails, hearings.

Jeff Bergosh:

The only two questions I have are, obviously I see that they've ruled that based upon what they were told, you can vote on it. I see that. But I just have to ask the attorney. Is this legal, what's contemplated? It's a very basic question, is it legal?

Alison Rogers:

It appears that it is legal. Will it invite scrutiny? I-

Jeff Bergosh:

I didn't ask that. I don't care about that. Is it legal? Is it legal for us to make a payment of this sum to employees who were apparently purposely not told about a plan that was very generous? That can affect, impact their families going forward, their retirements. And I don't care what people think. I agree with what Steven says about fairness. If I'm told and I make the proactive choice to stay in the pension plan, that's one thing. But if it takes five months to find the information, it's still not right, and then, oh, by the way, you lucked into something. It just doesn't seem right to me.

Jeff Bergosh:

So again, I read this and it looks like they can vote on it, but is it legal for the county to make that payment? That's a very important question. That's why whatever happens tonight, Steven, I'm certainly not prepared to make any firm decision tonight. I want to know that it's legal because here's the issue. If we make this vote and you guys get back payments and other employees who are entitled get back payments and it's challenged in court, and it's found to be unlawful, or it's found that we've made a mistake. Then there's ramifications for those of us who voted for it. So I want to be supportive. It's a hell of a lot of money and I'm angry that folks weren't told about it. It's not right.

Jeff Bergosh:

And you can complain all you want about... We don't make the rules. These are all set up by the state. The state sets a pension. If people want to get into a lather and worked up about it they need to look at what highly compensated elected officials make in DROP. You want to get lathered up and exercised. These are all programs of the state. We run for office, and it's what you get is part of the emoluments package that you get. Setting aside what people want to get upset about, but I got to know that it's legal and I don't have a warm and fuzzy that it is, Steven so-

Steven Barry:

I think tonight's conceptual about being able to move forward. Any actual resolution, any resolution is going to have to come back to the board. It's not a one item thing. And you mentioned that you were angry. I, over the 18 months, have probably gone through a number of the stages of grieving about the issue. Meaning, denial and anger. So yeah, I've certainly had those-

Steven Barry:

So yeah. I have certainly had those same feelings, and candidly, I will never... I said I took it on myself to bring it forward, so I would never try to draw anyone into my discussion, as I've never tried to draw any of my colleagues into something that is my problem necessarily. So I brought this forward.

Steven Barry:

That anger issue, that exists among a number of people that would be in that pool that had no idea what we were talking about even as of two months ago. So that emotion does, candidly, exist. And I think, in my opinion, it exists rightfully. So this would be just the opportunity to have people put what that delta might be to their situation if they wanted to pursue it, that dozen or so employees and any of the board members that would be wanting to do that. This allows them to reasonably take the time to try to figure out whatever that delta...

Steven Barry:

And the phrase was used, "lost earnings". Candidly, it's not earnings. This is not earnings. This is just simply principal contributions that would have gone in in a disparity, in a method that had a lot of disparity, in my opinion. So it's not any degree of earnings, simply principle contributions. But this would allow any of that pool of employees or board members potentially to take some time and look at their specific situation and see if it's something that they would like to pursue. Then any of those would come back to the board for another approval.

Jeff Bergosh:

But again, Steven, I don't even know if... Like I said, this is a big decision to make, because obviously we've all invested time in our service. I'm in my 15th year. And again, you make a mistake up here, there are consequences. There are elected officials around the state, not even charged with a felony, have been removed from office and stripped of their...

Steven Barry:

Well, I would say, we are certainly in these public meetings and we're in our degree of public service, and we have we have a general council that provides advice to the board, and that when the board takes the advice, then that provides the cover legally for the board. That's the rational of having an attorney's office. And what I would ask is, there's no way that moving forward conceptually is going to... That doesn't breach any legal issues, and in between the time of now and when the first resolution may come back before the board, we can certainly ask, based on the discussion tonight, for Alison to try to pin down a more firm answer for your question.

Jeff Bergosh:

And -

Steven Barry:

Because candidly, I don't have... That's why I went to them proactively. I've got no interest ever in being investigated by the ethics commission or having complaints filed against this, complaints filed against that. Certainly have no intention of doing anything that causes me any legal trouble as a commissioner. I think that's some something that I have taken a lot of pride in.

Jeff Bergosh:

I want to get to another specific issue. And I appreciate where you're at, Steven. And like I say -

Steven Barry:

So I agree with you. I got no intention of ending up getting removed from office for a felony voting on something like this. In some period of time, we can we can ask Alison to pin down that before something comes back.

Jeff Bergosh:

I would feel much more comfortable doing that. And then the other thing is, when I read the various ethics opinions, the one issue that I did not see was the issue of when you onboarded and you checked the box for the FRS investment. It did clearly have that other option down there. So was the ethics committee appraised of that? Because it seems to me like they were led in a direction that there was no knowledge whatsoever. Playing devil's advocate here because we got to get it right. Did they know about that form?

Steven Barry:

I certainly think so. I don't... I didn't...

Jeff Bergosh:

And here's the reason why I think it's problematic. You have the form, but the form also says a local annuity plan if available. So if they didn't tell you about it and they purposely hid the ball from you, I don't know that the form means much, but did they look at that? That's a critical question.

Steven Barry:

I don't know if I honestly can answer that. I'm not a hundred percent sure. I presume so. I know that we talked about it because he gave me the copy of my form immediately upon me finding out about the other plan where it said I elected it. And then one of the first things I said was, "Well, the terms of office are nothing that's guaranteed." If we were elected in 2012 and did paperwork in 2012, if that automatically kicks me out of it because I did paperwork, I... There was no guarantee I'd be reelected in 2016. I should have had more paperwork in 2016. Every time we're elected that begins a new service, a new term of office. That's why we're re-sworn in, all those things. There was never any... I won't speak for Commissioner May, but I know that I was never given another HR packet or any... There was no other form filled out. The only form I've ever filled out pertaining to the FRS issue was in 2012. So hypothetically, if that precludes a term of service and I should had another form to fill out in 2016, which I didn't get, then there's no form, based on your kind of question. So maybe that narrows it to just the second term.

Steven Barry:

And if that ends up being the answer that maybe comes back, okay. I mean, from my point of view, like I said at the very beginning, the fairness and equity, that's what this is about to me. And it is a few of us, but it's not just us. There's a much larger pool of employees that this pertains to. And I feel like I owe it to my children. I owe it to my family to pursue what a reasonable person would have chosen if given the information.

Jeff Bergosh:

Yeah, absolutely. There's no question. If someone tells you, you get 8% or you get 40%, I mean, come on. But obviously people weren't told. And now that leads me to my next point. I've received a phone call today from a former commissioner who said, "I was never told either. I want my money too." So is this a can of worms? Is there a four-year statute of limitations, or does this open up a can of worms for

every former commissioner, every former employee? Alison, that's a question to you. Is there a statute of limitations or can former commissioners now come back and get money?

Steven Barry:

I'll certainly let her answer that about the statute of limitations. I will say the question before the ethics commission was, and please correct me if I'm wrong, but it was limited to investment plan. So that's why anyone, whether it's a board member or an employee, anyone that would seek any type of resolution would have to convert. If they were in the pension plan, they would have to convert to the investment plan and then opt out. Or if they win the investment plan, they're already there, and then they would just opt out. So if that whoever, and I don't know who you spoke to, but if it was a former commissioner in the investment plan...

Jeff Bergosh:

He was. He was. So is there a statute of limitations, Alison, on that, of four years?

Alison Rogers:

Well, four years for a tort, five years for a breach of contract. I mean, it would just depend on what kind of theory the person was attempting to travel under if they were wanting to file a lawsuit.

Jeff Bergosh:

Okay. But they would file a lawsuit against whom?

Alison Rogers:

That's a good question. [crosstalk 00:38:22] against the provider and...

Jeff Bergosh:

So there's a lot to unpack here, Steven. And like I say, I want to be supportive of you in lumen, but I want to do it with great trepidation. I want to do it with a written opinion from you, Alison, that this is legal, this is lawful, and we can do it. Not an attenuated, disclaimed something from a board down south. I want to hear it. I want to read it from you. And I'd like to have some statutes cited as well. I mean, I don't mean to be so direct, but this is a big decision. And if we get it wrong, it will be challenged. It will be scrutinized. And then we can find ourselves, those of us who have put 15 years in, losing our pensions, if we do it wrong.

Steven Barry:

So, absolutely. I mean, I understand what you're saying. I respect it. That's how we end up in the discussion today rather than October of 2019. I.e. just trying to figure out how to possibly even navigate it, because it is a...

Jeff Bergosh:

So, Alison, can you put together... I mean, you're a very intelligent government lawyer. A written opinion that this is lawful. This is legal for us. Because I think there's problems... There could be problems with it. Back-pay for officials, public officials. I mean, some might say it's compensation. I don't know, but I'm not at a comfort level yet, Steven. I want to be there to support you guys. I'm angry that I wasn't told about it. I'm angry for all the employees who were not told about it. And I'm frankly disappointed. And

for him to take five months to solve it, I mean, good on you. You are tenacious. And you're getting 49% on your money. God bless you. The rest of these guys are getting 8.34%. So.

Lumon May:

Yep. And here's the point, as we said earlier, and I can concur with you because I think that we got to get it right. You got to always make sure that it's legal and it's ethical and it's moral. But it is an issue of fairness. And I mean, the 49%, unfortunately, when people keep pulling up that number, that's the same percentage that you pay [inaudible 00:40:36]. It's no different on the bottom line to the county. It's how the money's being reinvested. Quite frankly, when you look at it, FRS has taken a lot of money, but what they're doing is they're paying the retirement of people down. I mean, that's what they're doing. It's like Social Security.

Steven Barry:

Social Security.

Lumon May:

They're taking your money to pay that, and this is a risk. I can't speak for Commissioner Barry, but when I signed up, I certainly didn't sign up to say this would be a career. I signed up for the investment. And the intake person highlighted what I checked, and I said I wanted to be in whatever is the short-term investment. And the truth of the matter is, the intake HR person was negligent in conveying that information. I think that what Commissioner Barry has on the floor, Jeff, I agree with you that this has no compensation for all the people that had to do service. There are people who gave 25, 30 years to the county to find themselves having to go get another job. And maybe this would have fitted their performing portfolio much better.

Lumon May:

I'm seconding Commissioner Barry's motion. I would say to it, but I would accept exactly what you're saying. That the attorney gets an attorney general opinion. She gets consult from another attorney, put it in writing before... I mean, because this is just the discussion of what he's brought forth. I mean, before there is... And I feel very comfortable with what he's brought, but I don't think I can agree with you. No compensation for all of those employees or any commission until she can come back with that. We've gone to the ethics board and we go to the next level, because true transparency is where we ought to be. And so I would support Jeff directing the attorney to get us another opinion, a legal opinion, along with her opinion.

Speaker 5:

Steven.

Lumon May:

Want to make a amended motion that we could support?

Steven Barry:

The motion would be A through G and add... It would be A through G and add that nothing comes back to the board until Madam Counsel is able to procure a written statement saying that it's legal. Because if that comes back and says it's not, then nothing comes forward ever. Because...

Jeff Bergosh:

And I would prefer to get that first before we take action on this, Steven. I mean, I really am on the edge of my comfort zone. And again, I want to be supportive and I will be supportive, but it has to be legal. And I really think we need to seek that opinion. And I want to clear up whether or not this ethics opinion was based on the knowledge that you had filled out the enrollment form as well. And I didn't get that answer.

Alison Rogers:

I honestly don't remember definitively, but the question to the Commission on Ethics was asked from the perspective and on behalf of Commissioner Barry's perspective, and his question was, I didn't have enough information. There may be pieces of evidence like the 2016 ICMA contract. I mean, we didn't take absolutely everything to them and play out all the documents that there were. The question was, we didn't have enough information. We weren't informed.

Steven Barry:

Not that there wasn't the existence of a plan. Just the information... Robert mentioned getting a packet that included tables and stuff.

Jeff Bergosh:

Right.

Steven Barry:

I didn't see any tables. There were no tables.

Jeff Bergosh:

No. I never did either. I never did either.

Steven Barry:

And what you do is you leave it, as a layperson would presume, that if something doesn't reference this disparity in contribution rights, you would present it to the same contribution rights. Because you control it.

Jeff Bergosh:

To me, here's more of the most disturbing things of this whole issue, now that we're ripping the scab off and looking at it. We just fought through pretty tough reelections. I know I did. And I didn't hear anything about this from HR. Yet apparently, in 2019, it was known to you that the only way to make this change is within six months. So thankfully, the attorney reached out to me, Alison Rogers, in...

Jeff Bergosh:

Thankfully, the attorney reached out to me, Alison Rogers, in mid to late March and said, "By the way, you're on a clock, and here's a bunch of paperwork." And I appreciate her doing that because HR didn't do it. HR didn't do it and administration didn't. And now I find out every single one of them is in that plan.

Jeff Bergosh:

They knew, but why didn't they tell us? Why didn't they tell us? That's what I'm mad about. That's what you should be mad about. But stepping back from that, it doesn't matter how mad you are. I'm not going to do anything illegal. I won't do anything illegal. I won't do anything unlawful or unethical. So that's why I'm kind of torn on this, Steve. I want to support it and I will support it, but I need a lot more comfort level before I do so. I would greatly prefer and recommend that we not take action on this tonight. That we get what we've requested from the attorney first. You're in now, right? You're in?

Steven Barry:

Yeah, yeah.

Jeff Bergosh:

And we see what you're thinking about. Let's get all the facts and then, look, I won't duck out of this room. I'll make the vote if it's the right thing to do. But I got to make sure it's the right thing to do. I'm not going to give up 15 years that I've put in.

Steven Barry:

Sure.

Jeff Bergosh:

Thank you.

Speaker 6:

[inaudible 00:46:16].

Steven Barry:

Yeah. I mean, I guess I'll withdraw the motion on the floor and we'll try to procure a more definitive written agreement. That was the intent of going to the ethics commission in March to try to cross that bridge, to see if there's even something on the other side first. But, I understand what you're saying and there's none of us, even colleagues I might disagree with at times, and there's none of us that have any intent of doing anything, especially at taking action up here that's illegal.

Steven Barry:

If the intent is that, hypothetically, you can support it based on the forthcoming written opinion that says it's legal, then I'll take that.

Jeff Bergosh:

Yeah, absolutely.

Steven Barry:

I've mentioned it a bunch of times up here. I mean, I've got nine years on the board and I've been fortunate for the most part to garner support from my colleagues. And it's because I try to read the room and work with folks, kind of give and take for what folks will support.

Jeff Bergosh:

And Steven, that's not going to change going forward. It's not going to change going forward. And believe me now there's an article out already and I'm taking a bullet. I didn't even opt for this plan and I'm getting beat up for it, just for saying, I want to be fair to people and make sure that they're whole. This newspaper is this disgusting joke, Jim. It's just a disgusting despicable rag. I'm getting beat up. I'm trying to do the right thing for people who were not told, purposely, not told. Disgusted with this newspaper. What a joke.

Lumon May:

And Jeff, for me... And we'll go to the record. And I applaud Commissioner Barry for bringing it forward. It's really not about the commissioners, but they are senior people who don't have the ability to have this microphone, that feel like they can't voice, that they feel like they were never given the opportunity. And so even if it came to a point where commissioners or elected officials and staff was properly compensated, I would feel good about it. But what I do believe, as Commissioner Barry said, what's fair for all. I'm never going to fight for something. It's always a thought that we should make sure that we look out for everyone. I mean, I think that everyone should be given the opportunity for their years of service to be compensated properly. And there are some people who were just left out and I appreciate your position and your honesty.

Lumon May:

I mean, quite frankly, I'm missing my son's basketball game. It's worth much more than any compensation I could've gotten, [inaudible 00:49:52] here all night. So money can't pay me for the time I miss with my children.

Steven Barry:

Sir, Commissioner, don't take action on me. I believe Madam Attorney has got direction to get a written legal opinion about the legality of items, in this instance, legality of items A through G as they were presented, and see if that's a legal course of action. That's what you're asking. Right? That's good enough.

Robert Bender:

Okay. Commissioner Underhill?

Doug Underhill:

Thank you, Mr. Chairman. I think I'll go ahead and make my comments. I'm sure it won't end up getting very far, but they say that in the military, if you want to get people to do pushups, as a leader get down on the ground and start doing pushups. You don't order them. Then that's a principle of what's good for... You lead from the front and what's good for the leader. He eats the same food as everybody else. That kind of thing. If the 401 Alpha is so great, which obviously it is, is there any reason, and I'll make this to HR and to Legal, is there any reason that we don't make this available to every single one of our employees?

Alison Rogers:

It's state law.

Robert Bender:

State law.

Alison Rogers:

Because the general idea under state law is that if you are going to be an FRS participating agency, which Escambia County has been for decades, you're required to have all of your people be members of the FRS, unless they meet one of the very few narrow exceptions.

Doug Underhill:

That's okay. And thank you. I'd rather you say it. I'm not sure I could get it out of my mouth without spitting. We are forcing every single one of our employees to pay the exorbitant overhead of the FRS, except us.

Steven Barry:

Yeah. Speak for yourself. I'm not in this program.

Doug Underhill:

No, no. Except us, us the senior people. Okay. Whether it's you... I'm not in it either and would not be in it. Wouldn't have chosen it. Wouldn't accept anything that is not good for the... That is not the same as the people we lead. It's just wrong government.

Doug Underhill:

When you make such a sweet deal available to us, us the privileged class, but not available to the guy that takes out the trash every day.

Steven Barry:

Commissioner, candidly, you may or may not be aware of it. Your contribution multiple two years to your pension plan is also five or six times the regular employee's contribution multiple.

Doug Underhill:

I'm obviously very aware of it.

Steven Barry:

Obviously, obviously, but you want to be the same as the employee, but you're obviously aware you're actually accruing a six times higher pension benefit than they are.

Doug Underhill:

And I'm criticizing the state practice that forces us into that condition.

Lumon May:

And the reality of it, Commissioner, is the 49% is the same thing you would pay the FRS. It doesn't cost the local citizens any more money. It's not something that county commissioners or anybody have established. It's the same thing with state legislators, state senators. It's the same thing for judges and all those who serve in elected position. And quite frankly, at the end of the day, when you really analyze

this, it is a bargain in terms of tax dollars, because it's a gamble on longevity of life. When you take this investment and retirement, you get here a lump sum.

Lumon May:

If you go into FRS and you get it, it pays you or your spouse in perpetuity and to death, paying to death. And so one of the reasons this was implemented, and I say is because it certainly saves taxpayers' money in the long run. That's unfortunate, if people have misconstrued it, through any other form of media or social outlets, that this is adverse cost. It is not. It's actually, the reason it was implemented is because its a savings to the taxpayers long-term.

Lumon May:

Okay. Last item for tonight is the county attorney's correction-.

Pam Childers:

[inaudible 00:53:47].

Lumon May:

Yes, ma'am.

Pam Childers:

Before we close this item, I'd like to say a few things as the comptroller of this county and somebody that holds the checkbook. I have reservation in fulfilling a vote that you would have to back fund a pension. You are here with accusations that you were never told. And I sit in the seat to have to believe you and spend taxpayers' dollars. So you're going to put me in a difficult position. The position that your attorney is going to take is she's going to tell you, is it legal for you to vote on this? She can't program your ethics or your morals. She's going to stay legal. Then I need to... Independently I answer to Governor DeSantis and I answer to the people. I am really going to have to look at this closely. I am not comfortable at this time to back fund a pension for the commission or for the employees.

Pam Childers:

My second point would be looking at that contribution rate to ICMA and finding and reviewing a net benefit rate, the conversation that I hear is that it's the exact same amount that the county pays. But ultimately we're talking about the benefit that is [inaudible 00:55:24] to the individual. So the rate that you pay FRS is deducted heavily for admin fees, et cetera, et cetera. So the net rate that goes to employees or anyone in FRS, is this tall. The ICMA rate, the way it is written in the contract that came to this board, or a commission board for approval, is giving the gross rate of benefit to those select folks in the senior class management status and to the commissioners.

Jeff Bergosh:

So, Pam, let me ask you a question. Had we not gone through this entire conversation before you chimed in at the end and voted to pay Commissioner Barry's back pay, are you saying you would have given the same due consideration after we voted?

Pam Childers:

I was going to speak first. I didn't think it was proper for me to speak first to tell you that I am probably not going to be comfortable if you all vote to that fund-

Jeff Bergosh:

What if Alison finds statutes and precedents that it's legal?

Pam Childers:

Again, I don't answer to Alison and I don't answer to the commissioners. I answer to the people and I answered to Governor DeSantis.

Jeff Bergosh:

I do too.

Pam Childers:

And so I am going to review the opinion that she creates for you all. And I'm, I appreciate the fact that you went this direction.

Jeff Bergosh:

Absolutely.

Pam Childers:

Instead of... Yes, sir. Instead of making a vote to move A through G. So I like the way you went and I will be glad to work with Alison on any collaboration and do some research in what I can find.

Jeff Bergosh:

I hope you understand that I don't like having to even think about this. It's a terrible thing for us to be put into, but I don't like the idea that people were not told and for anyone to think otherwise is ridiculous. Robert is a brand new commissioner. We've got an 8% or we've got a 40%. And it took him five months to figure out there was something going on and people weren't told. Former commissioners weren't told. Former employees didn't know. That's the problem that I have.

Pam Childers:

And we might find ourselves in a lawsuit. I don't know where this will land or where your vote will go. But I do want to have the conversation with you that at this time I am not comfortable with it. And I hold the checkbook for this county. Just thought I should let you know before this discussion ends.