IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY,

Petitioner,

v. **Case No. 2022-CA-0141**

PAM CHILDERS, Clerk of the Circuit Court and Comptroller for Escambia County,

Respondent.

ORDER RESOLVING DISPUTED ISSUES AND DENYING ESCAMBIA COUNTY'S REQUEST FOR A WRIT OF MANDAMUS

THIS CAUSE is before the Court on Petitioner's Amended Complaint for Writ of Mandamus, Including Supporting Memorandum of Law (Amended Complaint), filed on January 31, 2022, and incorporated into an Alternative Writ in Mandamus, issued on February 8, 2022. On February 26 and 27, 2024, a bench trial was held on the matter. In this Order, the Court refers to Petitioner as "the County" and Respondent as "the Clerk." Having considered the testimony and evidence introduced at trial,[1] the record, and the applicable law, the Court finds as follows:

Factual Background

In 1997, the County entered into a contract with ICMA Retirement Corporation for the purpose of establishing a local retirement program. The agreement was amended in 2016

[1] References in this Order to the trial transcript are designated by "T" followed by the applicable page number(s).

(ICMA Retirement Corporation Governmental Money Purchase Plan & Trust), and again in 2022 (MissionSquare Retirement Governmental Money Purchase Plan Adoption Agreement). For purposes of this Order, the Court refers collectively to the result of these agreements as the "Local Plan." The Local Plan is not part of the Florida Retirement System (FRS), not administered by the Florida Department of Management Services, and not overseen by the Florida State Board of Administration. The County can amend its contract with MissionSquare, and the County is not required by statute to use a fixed rate of contribution for its Local Plan. The County may also change the rate of contribution for participants in the Local Plan. Commissioner Robert Bender[2] joined the Local Plan shortly after being elected in 2018, and by early 2021, Commissioners Lumon May and Steven Barry had joined the Local Plan. Effective July 1, 2021, the Clerk reduced the contribution rate of the three county commissioners participating in the Local Plan to 8.34 percent. Effective January 1, 2022, the Clerk ceased all contributions for the three commissioners.

Procedural History[3]

On January 21, 2022, the County filed a Complaint for Writ of Mandamus. On January 26, 2022, this Court was assigned to this case. The County filed an Amended Complaint on January 31, 2022.[4] On February 8, 2022, this Court issued an Alternative Writ in Mandamus. On March 1, 2022, the Clerk filed a Motion to Quash. On March 8, 2022, this

[2] Robert Bender was appointed Escambia County's Supervisor of Elections on January 26, 2024, and he is no longer a commissioner.
[3] The Court does not recite the complete list of all filings in this case.
[4] During the course of this action, the Florida Association of Court Clerks filed a motion to appear as amicus curiae, which included a memorandum of law in support of the Clerk. On December 21, 2022, the Court granted the motion only to the extent that the Association's memorandum of law would be accepted as filed.

Court entered an order directing the County to file a response within 20 days. On March 24, 2022, the County filed a Stipulated Motion to Extend Deadline, which this Court granted via an order entered on March 29, 2022. On April 1, 2022, the County filed its response to the Motion to Quash. Subsequently, on April 14, 2022, the Clerk filed a reply. On June 17, 2022, the Court held a hearing on the matter, and on July 5, 2022, the Court entered an order denying the Motion to Quash.

On July 12, 2022, the Court entered an order setting a case management conference. The Court held the case management conference on August 16, 2022, and entered an order reciting the action taken at the case management conference and providing directions to the parties. On the same day, the Clerk filed a Motion for Summary Judgment. On August 23, 2022, the parties filed a joint statement per the Court's case management order.

On August 31, 2022, the Clerk filed a Motion for Partial Summary Judgment on the Interpretation of Section 121.182, Florida Statutes. On September 1, 2022, the Clerk filed a Motion for Partial Summary Judgment Determining that Retirement Benefits are Part of a County Commissioner's Compensation. The Court held a case management conference on September 12, 2022, at which time the parties agreed to have those motions heard without a hearing, and a briefing schedule was set via a case management order entered on September 28, 2022. Also on September 28, 2022, the Clerk filed amended versions of both motions. On November 11, 2022, the County filed written oppositions to the motions. The Clerk filed replies on December 14, 2022, followed by an amended reply on December 27, 2022. On March 1, 2023, the Court entered an order directing the parties to file additional briefing on two issues. Subsequently, pursuant to the Court's order, the parties filed their additional

briefs on March 31, 2023. On August 23, 2023, the Court entered orders denying the motions for partial summary judgment.

On September 19, 2023, the Clerk filed a notice stating that the case is "ready to be set for non-jury trial." A case management conference was held on December 19, 2023. On January 10, 2024, the Court entered an order for trial with directions to the parties to file a joint pretrial statement. The parties filed a joint pretrial statement on February 9, 2024, followed by an amended joint pretrial statement on February 22, 2024. The trial was held on February 26 and 27, 2024. Subsequently, the parties filed closing arguments on March 5, 2024, and responses were filed on March 12, 2024.

The County's Complaint[5]

The County seeks issuance of a writ of mandamus and other relief. The County states that pursuant to section 121.182, Florida Statutes, "the Legislature authorized counties to create local supplemental retirement programs." The County states that it created such a plan "on January 7, 1997, by passing Resolution (R97-1)" which "was codified at Section 2-151" of the Escambia County Code of Ordinances. The County states that "in connection with R97-1, the County entered into a contract with ICMA Retirement Corporation for the establishment of a supplemental local retirement program." The County asserts that the Local Plan is authorized by section 121.182. The County also asserts that section 125.01(1), Florida Statutes, "accords a county all power not inconsistent with general or special law" and that "[s]ection 125.01(3)(a) further imbues a county with all implied powers appropriate to determine benefits available to different types of personnel." The County asserts that either

[5] See Alternative Writ of Mandamus, filed on February 8, 2022.

"home-rule authority, or the special statute authorizing the Local Plan, is an adequate basis for the Court to find that the Local Plan is grounded in good law."

The County states that in 2021, as to the three county commissioners, the Clerk "cut payments to an arbitrary reduced rate, and then in 2022 decided to discontinue them entirely." The County states that the "Clerk has no discretionary authority to refuse to honor" the contract. The County states that three members of the Board of County Commissioners have "had their retirement contributions cut by the Clerk." The County seeks an order from this Court to compel the Clerk to "resume her longstanding practice of making payments of County money to the retirement plan the County established."

General Legal Authority

"A writ of mandamus is the appropriate remedy for compelling a governmental official to perform a ministerial duty that involves no discretion."[6] The essential requirements for issuance of a writ of mandamus are (1) an official duty imposed by law requiring the respondent to perform; (2) a ministerial act; (3) that the respondent refused or failed to perform; (4) and for which the petitioner has a clear legal right to compel performance; (5) and no other adequate remedy.[7]

Discussion

During the course of this action, the parties have spent some time briefing and arguing various matters including the origins of the Local Plan and the origins of the present

[6] Phillips v. Pritchett Trucking, Inc., 328 So. 3d 380, 382 (Fla. 1st DCA 2021).
[7] See generally Huffman v. State, 813 So. 2d 10, 11 (Fla. 2000); Romine v. Allen, 262 So. 3d 855, 857 (Fla. 1st DCA 2018); Gawker Media, LLC v. Bollea, 170 So. 3d 125, 131 (Fla. 2d DCA 2015); Moorman v. Hatfield, 958 So. 2d 396, 399 (Fla. 2d DCA 2007); Architectural Sheet Metal, Inc. v. RLI Ins. Co., 936 So. 2d 1181, 1182 (Fla. 5th DCA 2006); Soto v. Bd. of Cnty. Com'rs of Hernando Cnty., 716 So. 2d 863, 864 (Fla. 5th DCA 1998).

dispute. The Court dismisses those arguments because they are not germane to the determination of the ultimate issues in this case.

The Court finds that the resolution of this case depends primarily on two questions: (1) Is it lawful for elected officers (e.g., county commissioners), to participate in the Local Plan, and (2) if it is lawful for elected officers to participate in the Local Plan, does such participation constitute unlawful compensation?

Whether Elected Officers May Lawfully Participate in the Local Plan

Article II, Section 5(c) of the Florida Constitution, provides as follows: "The powers, duties, compensation and method of payment of state and county officers shall be fixed by law." Section 145.131(2), Florida Statutes, states that "[t]he compensation of any official whose salary is fixed by this chapter shall be the subject of general law only, except that the compensation of certain school superintendents may be set by school boards in accordance with the provisions of s. 1001.47."

Although the County claims that section 121.182 "is the general law authorizing the Local Plan,"[8] the Court finds otherwise. Section 121.182 states as follows:

> Municipalities and counties are authorized to purchase annuities for all municipal and **county personnel** with 25 or more years of creditable service who have reached age 50 and have applied for retirement under the Florida Retirement System. No such annuity shall provide for more than the total difference in retirement income between the retirement benefit based on average monthly compensation and creditable service as of the member's early retirement date and the early retirement benefit. Municipalities and counties may also purchase annuities for members of the Florida Retirement System who have out-of-state service in another state or country which is documented as valid by the appropriate city or county. Such annuities may be based on no more than 5 years of out-of-state service and may equal, but not

[8] See The County's Response to the Clerk's Closing Brief, p. 5.

> exceed, the benefits that would be payable under the Florida Retirement System if credit for out-of-state service was authorized under that system. Municipalities and counties are authorized to invest funds, purchase annuities, or provide local supplemental retirement programs for purposes of providing annuities for city or **county personnel**. All retirement annuities shall comply with s. 14, Art. X of the State Constitution.[9]

There are multiple reasons why section 121.182 does not operate in the County's favor.

First, county commissioners are elected officers.[10] Elected officers, such as county commissioners, are not "county personnel" for purposes of the statute. Elected officers are not the same as employees or personnel. The Court notes that section 125.74(1)(k), Florida Statutes, shows how elected officers should not be considered county personnel as to the issues presented in this case. Section 125.74(1)(k) provides in part that the county administrator selects, employs, and supervises "all personnel" and "fills all vacancies, positions, or employment under the jurisdiction of the board." Elected officers, of course, are not selected and employed by the county administrator, and therefore, they are not "county personnel."

Further, the 2005 staff analysis and economic impact statement concerning the amendment of section 121.182 makes it clear to this Court that the provisions in the statute are for county *employees* that meet the age and years of service conditions of the statute.[11]

Even if county commissioners were considered to be "county personnel," the parties have stipulated that none of the commissioners at issue have at least 25 years of service with Escambia County; none have applied for retirement under the Florida Retirement System;

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[9] Emphasis added.
[10] See § 121.052, Fla. Stat. (2023).
[11] Fla. S. Comm. on Ways and Means, SB 252, Staff Analysis (April 11, 2005), https://www.flsenate.gov/Session/Bill/2005/252/Analyses/20050252SWM_2005s0252.wm.pdf

none have out-of-state service in another state or county; and one or more of the commissioners had not reached age 50 before seeking participation in the Local Plan.[12] Accordingly, the commissioners do not satisfy the requirements of section 121.182.

Although in this case significant focus has been placed on the penultimate sentence of the statute, the Court finds that section 121.182 does not provide a general grant of authority for the purchase of annuities for county personnel. The legislative history of section 121.182 guides the Court in making that determination. Section 121.182 was enacted in 1996. The June 1, 1996, final bill analysis and economic impact statement states as follows:

> Section 121.182, F.S., is created to permit counties to purchase retirement annuities for county personnel 50 years of age or older with 25 or more years of creditable service. No such annuity may provide income in excess of the amount required to offset the early retirement penalty. Counties may also purchase annuities for up to 5 years of out-of state service. (These provisions essentially mirror the authority provided school districts and community college boards of trustees under ss. 231.495 and 240.344, F.S.)[13]

This final bill analysis indicates that no general grant of authority was intended.

Nevertheless, even if the statute provided a general grant of authority, and then even if county commissioners could be considered county personnel, the County does not prevail because the word "supplemental" means, "[s]upplying something additional; adding what is lacking[.]"[14] The Local Plan acts as a replacement or alternative plan to what is offered through FRS, and therefore, it is not a *supplemental* plan.[15]

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[12] See Joint Statement Per Case Management Order, filed August 23, 2022.
[13] Fla. H.R. Committee on Governmental Operations, CS/HB 961, p.8 (June 1, 1996) (available at Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.).
[14] Black's Law Dictionary (11th ed. 2019).
[15] T. 70; 347.

The evidence does not show that the County invested funds, purchased annuities, or provided supplemental retirement programs for purposes of providing annuities for county personnel.

Consequently, for the above reasons, section 121.182 does not provide a basis for the relief requested by the County.

To the extent that the County relies on a home-rule argument, that argument fails because section 121.182 is a general law,[16] and the Local Plan as applied to elected officers is inconsistent with that general law. As further discussed in this Order, the Court finds no other statutory approval for the Local Plan as to elected officers.

Section 121.055, Florida Statutes, has received attention in this case because it is cited in section 2-151 of the Escambia County Code of Ordinances. Section 2-151 is titled "Authorization of qualified plan" and states:

> In accordance with F.S. § 121.055, which provides that members of the senior management service class may elect to participate in an optional annuity program, the board of county commissioners hereby authorizes the implementation and administration of a plan or plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended.

Section 121.055 establishes a separate class of membership in FRS known as the "Senior Management Service Class." County commissioners are considered members of the "Elected Officers' Class" within FRS.[17] However, pursuant to section 121.052, elected officers can

[16] The parties stipulated to the fact that section 121.182 is a general law. See Joint Statement, filed August 23, 2022.
[17] See § 121.052(2)(d), Fla. Stat. (2023).

elect membership in the Senior Management Services Class. Nevertheless, such elected officers continue to remain elected officers.[18]

At one time, section 121.055 permitted members of the Senior Management Service Class to "withdraw from the Florida Retirement System altogether and participate in a lifetime monthly annuity program which may be provided by the employing agency."[19] The statute also used to state, "The employer providing such annuity shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Senior Management Service Class contribution rate."[20] However, in 1999, that language was removed from the statute,[21] and the current version of the statute does not include that language. Accordingly, an option for members of the Senior Management Service Class to withdraw from FRS altogether and participate in a lifetime monthly annuity program which may be provided by the employing agency no longer exists. Moreover, the option did not exist during the time frames in which the commissioners at issue in this case were participating in the Local Plan.[22]

Notably, the Elected Officers' Class Retirement Plan Enrollment Form, which used to provide an option for withdrawal from FRS to participate in a local annuity plan, was amended in July of 2021, eliminating that option.[23]

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[18] See T. 307.
[19] § 121.055(1)(b)2., Fla. Stat. (1997).
[20] Id.
[21] Ch. 99-291, Laws of Fla.; § 121.055, Fla. Stat. (1999).
[22] The trial testimony of County Attorney Alison Rogers shows that none of the commissioners at issue had been participating in the Local Plan prior to 2018. T. 280-82.
[23] See T. 298-300; Defense Exhibits C-14, C-15, and C-34.

No evidence was presented to show that the County, in regard to the Local Plan, ever contributed an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability.[24]

Further, the evidence does not show that the County has purchased annuities or annuity insurance under the Local Plan for the commissioners.[25]

Consequently, for the above reasons, section 121.055 does not provide a basis for the Court to find in the County's favor.

The parties do not dispute that the responsibilities of the Clerk include serving as the auditor and custodian of Escambia County funds and that the Clerk is required to withhold approval of a proposed County expenditure if that expenditure is for an unlawful purpose.

Accordingly, because it is not lawful for elected officers (e.g., county commissioners), to participate in the Local Plan, the Clerk properly exercised discretion in ceasing to make the payments to the Local Plan. In short, the County does not have a clear legal right to compel the Clerk to make contributions into the Local Plan for the county commissioners. Therefore, mandamus does not lie.

Although the Court could end its inquiry here, the Court resolves the additional disputed question.

Unlawful Compensation

Section 145.17, Florida Statutes, states as follows:

[24] Commissioner Barry testified that when participating in the Local Plan, the County's contribution goes into his account within the plan and is immediately vested. T. 73.

[25] T. 62-69; 239-240; 336; 436-437; 445; 449. The Court notes that section 112.08, Florida Statutes, requires a local governmental unit to advertise for competitive bids before entering any contract for insurance—including annuity insurance. The evidence does not show that the County ever advertised for competitive bids concerning a group insurance plan for annuities.

> The compensation provided in chapter 145 shall be the sole and exclusive compensation of the officers whose salary is established therein for the execution of their official duties, and, except as specifically provided herein, the acceptance of salary for official duties as a result of other general or special law, general law of local application, resolution, or supplement or from any other source is a misdemeanor of the first degree punishable as provided in ss. 775.082 and 775.083.

Although the County maintains that participation in the Local Plan does not constitute compensation for the commissioners, this Court finds otherwise. Based on definitions of the term "compensation," testimony and other evidence produced at trial, and section 145.131, Florida Statutes, the County is wrong.

Compensation is defined as "[r]emuneration and other benefits received in return for services rendered; esp., salary or wages."[26] Notably, the State of Florida's "Total Compensation Estimator" includes retirement as part of total compensation.[27] The County's own Employee Benefits Summary indicates that the Local Plan is deferred compensation.[28] "Pension rights are a part of the employee's compensation."[29] Commissioner Barry testified that the amounts deposited into his Local Plan account are income that would eventually be taxed.[30] Notably, section 145.131, Florida Statutes, which is titled, "Repeal of other laws relating to compensation; exceptions," provides:

> All or any portion of the payment of the costs of life, health, accident, hospitalization, or annuity insurance, as authorized in s. 112.08, for county officials and employees shall not be deemed to be compensation within the purview of this chapter; and all

[26] Black's Law Dictionary (11th ed. 2019).
[27] See T. 385 and Defense Exhibit C-30.004.
[28] See T. 111-112 and Defense Exhibit C-6.024.
[29] City of Hialeah v. Willey, 189 So. 2d 194, 197 (Fla. 3d DCA 1966).
[30] T. 112.

> payments previously made from county funds for such purposes are hereby validated.[31]

If the Legislature had wanted to provide an exception so that supplemental retirement programs would not be considered compensation, it could have—but it did not. The Local Plan is not annuity insurance, as discussed earlier.

Further, the Court considers the legislative intent regarding Chapter 145. Section 145.011(1), Florida Statutes, states, "In compliance with s. 5(c), Art. II of the State Constitution, it is the intent of the Legislature to provide for the annual compensation and method of payment for the several county officers named herein." As mentioned earlier, Article II, Section 5(c), of the State Constitution requires that the "compensation and method of payment" of "county officers shall be *fixed by law*." (emphasis added). It is clear to this Court that part of "the evil to be corrected"[32] by the Legislature's enactment of Chapter 145 is "that a *uniform and not arbitrary* and discriminatory salary law is needed to replace the haphazard, preferential, inequitable, and probably unconstitutional local law method of paying elected county officers."[33] Because the rate of contribution for participants in the Local Plan is set by contract, the County's contributions to the Local Plan for elected officials are not fixed by law.[34] The fact that the Local Plan may use the FRS rate for contributions does not render the plan legal for elected officers, such as county commissioners. The commissioners may vote on matters concerning their compensation.[35]

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[31] § 145.131(3), Fla. Stat. (2023).
[32] See State Farm Mut. Auto. Ins. Co. v. Shands Jacksonville Med. Ctr., Inc., 210 So. 3d 1224, 1229 (Fla. 2017) (discussing tenets of statutory interpretation, including consideration of the "evil to be corrected").
[33] § 145.011(2), Fla. Stat. (2023) (emphasis added).
[34] T. 355-356.
[35] See § 112.313(5), Fla. Stat. (2023); T. 345-346

As the Clerk asserted during its written closing argument, "If local commissioners are able to vote themselves increases in compensation beyond that set by general law, the purpose of the Constitutional restriction would be negated by allowing public officials to do indirectly what they clearly are not allowed to do directly."[36] In sum, the Court finds that the County's contributions to the Local Plan on behalf of county commissioners constitute unlawful compensation.

The Court acknowledges the County's argument that the cost to the County is the same under the Local Plan as in FRS. On its surface, the argument has a simple appeal: it costs the taxpayers the same either way. However, that surface-level appeal cannot be the end of the inquiry.

On closer examination, a retirement accrual example of the circumstances is illuminating. For purposes of the example, the Court finds that the closest FRS analog to the Local Plan would be the FRS investment plan.[37]

The Local Plan uses FRS rates to determine the employer's (i.e., the County's) contributions into the Local Plan.[38] Because the Local Plan does not include an employee contribution amount, the Court's example does not include an employee contribution amount. Further, the Court will assume for purposes of the example that the salary and employer contribution rates remain the same over the course of time in the example. The Court does not assume any earnings on the contributions, but only calculates the accrual of

[36] See Clerk's Closing Argument, p.52, filed March 5, 2024.
[37] See §§ 121.4501, 121.571, Fla. Stat. (2023).
[38] See T. 374.

employer contributions to determine the personal benefit to a commissioner participating in FRS versus the Local Plan over the course of three elected terms (i.e., 12 years).

The FRS required employer retirement contribution rate is 12.39 percent for County Elected Officers.[39] Assuming a commissioner serves 12 years with a salary of $98,501 per year,[40] the employer contributions benefitting a commissioner participating in FRS amount to $146,451.24.[41]

Under the Local Plan, the County's contribution rate for the commissioners is 58.68 percent.[42] Assuming a commissioner serves 12 years at a salary of $98,501 per year, the employer contributions benefitting a commissioner participating in the Local Plan amount to $693,604.68.[43]

The difference in the personal benefit to a commissioner is:

- FRS - $146,451.24
- Local Plan - $693,604.68

Under the Local Plan, the commissioner in this example would receive about 4.74 times more in accrued contributions than a commissioner who is enrolled in FRS.

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[39] § 121.71(4), Fla. Stat. (2023).
[40] See Amended Joint Pretrial Statement, filed February 22, 2024, providing that the current salary amount for Escambia County commissioners is $98,501.
[41] In other words, 12.39 percent of $98,501 equals $12,204.27. That amount multiplied by 12 years equals $146,451.24.
[42] Because the Local Plan uses the FRS rate for employer contributions, to create this example, the Court refers to sections 121.71, 121.052, and 121.74, Florida Statutes, which results in a total contribution by the employer of 58.68 percent for members of FRS in the Elected Officers' Class. More specifically, section 121.71(4) requires 12.39 percent for required employer retirement contribution rates, and section 121.71(5) requires 44.23 percent to address unfunded actuarial liabilities of the system. Section 121.052(7)(d) requires 2 percent for the Retiree Health Insurance Subsidy Trust Fund. Section 121.74 requires 0.06 percent for costs of administering the FRS investment plan and educational costs for members of FRS.
[43] In other words, 58.68 percent of $98,501 equals $57,800.39. That amount multiplied by 12 years equals $693,604.68.

Although the Local Plan is clearly more personally advantageous for a commissioner, that is not the only concern.

When a county commissioner participates in the Local Plan, harm is done to FRS and to the people who participate in FRS, as explained below.

Maintaining the health of FRS is clearly a concern, as indicated by the Florida Constitution,[44] as well as the Legislature's requirement that an actuarial study of the system must "be made at least annually" and reported to the Legislature.[45] The Legislature has determined, in regard to the Elected Officers' Class—County Elected Officers, that 44.23 percent of the employer contributions are for the purpose of addressing the unfunded actuarial liabilities of the system.[46]

In keeping with the prior example, the Court finds that another practical illustration is warranted regarding the harm the Local Plan causes to FRS and its participants when a county commissioner takes part in the Local Plan. Assuming a commissioner serves 12 years with a salary of $98,501, the calculations[47] lead to the following conclusions:

- Personal financial cost to the commissioner = $0
- Harm to FRS and FRS Participants = $522,804
- Additional compensation to commissioner = $522,804

[44] The Florida Constitution states, "A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds *shall not . . . provide any increase* in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis." Art. X, § 14, Fla. Const. (emphasis added).
[45] See § 121.031(3), Fla. Stat. (2023).
[46] See § 121.71(5), Fla. Stat. (2023).
[47] Calculating 44.23% of 98,501 equals 43,567. That amount multiplied by 12 years is $522,804.

The financial impact to the actuarial soundness of FRS is clearly evident. If a commissioner participates in the FRS investment plan, the 44.23 percent contributed by the County would properly go to maintaining the actuarial soundness of FRS. However, when a commissioner participates in the Local Plan, money that the Legislature intended to fund FRS instead goes to the commissioner. As shown in the above example, the commissioner in the Local Plan would receive over a half-million dollars that should have been used to maintain the health of FRS for the benefit of all of its participants.

The funding of the Local Plan is contrary to the Legislature's intent to provide "uniform compensation of county officials having substantially equal duties and responsibilities"[48] and to provide "a uniform and not arbitrary and discriminatory salary law . . . to replace the haphazard, preferential, inequitable, and probably unconstitutional local law method of paying elected county officers."[49]

To construe the statutes at issue in this case to find that the Local Plan as applied to county commissioners is lawful would constitute an absurd result.[50]

Ruling

A. It is not lawful for elected officers (e.g., county commissioners), to participate in the Local Plan;

B. The County's contributions to the Local Plan on behalf of county commissioners constitute unlawful compensation;

[48] § 145.011(3), Fla. Stat. (2023).
[49] § 145.011(2), Fla. Stat. (2023).
[50] See Diaz v. Jones, 215 So. 3d 121, 122 (Fla. 1st DCA 2017) ("A basic tenet of statutory construction compels a court to interpret a statute so as to avoid an unreasonable or absurd result.").

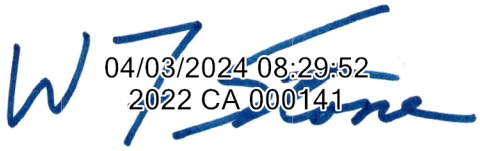
The Legislature by general law has provided retirement plans for county commissioners by including county commissioners within the definition of the Elected Officers' Class and mandated participation by county commissioners in the Florida Retirement System.

The findings made in this Order shall not be construed to suggest that retirement plans constitute unlawful compensation as contemplated by Chapter 145. The findings herein are only as to the Local Plan, the subject of this action, as applied to county commissioners.

C. The Clerk properly exercised discretion in ceasing to make the payments to the Local Plan.

Therefore, it is **ORDERED AND ADJUDGED** that the County's requests for a peremptory writ of mandamus and other relief are **DENIED**.

DONE AND ORDERED in Chambers, Fort Walton Beach, Okaloosa County, Florida.



signed by CIRCUIT COURT JUDGE WILLIAM STONE 04/03/2024 08:29:52 +4wo18ZK

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