

George Koczwara

From: Beth Janicki Clark <bclark@imrf.org>
Sent: Thursday, October 31, 2019 1:38 PM
To: Dennis G. Walsh
Cc: George Koczwara; Vladimir Shuliga; Mark Nannini
Subject: RE: IMRF Memo 10-30-19

Dennis,

Thank you for your request. Vlad and I have reviewed the updated memo (final version) submitted by George at 12:33 pm today. We agree that if Resolution 1908 is repealed/rescinded, that Resolution 1722 would govern and the Village President position would remain eligible for IMRF participation at 1000 hours. We also agree that in order to make the Village President position immediately ineligible for IMRF participation, a new form 6.64T for the office of Village President would need to be passed by the Board with an immediate effective date.

Please keep in mind the Illinois Pension Code is ultimately what sets forth the parameters for participation by elected officials in IMRF. The resolution requirement was established by the IMRF Board many years ago and the most recent version can be found at: <https://www.imrf.org/en/about-imrf/board-resolutions/eligibility/br-2019-05-09-d>. IMRF expects employers to make determinations of eligibility for participation within the requirements of the Illinois Pension Code and under the guidelines provided by IMRF. The Illinois Pension Code only allows persons occupying an office to participate in IMRF if that office "normally requires performance of duty" for the hourly standard of that employer (in Orland Park the hourly standard is 1000). Hours spent at meetings, preparing for meetings, in the office and hours spent actually conferring with constituents are to be counted as performance of duty. Hours spent on-call or otherwise informally available to constituents do not count as hours necessary to do the job. When an employer makes a determination regarding eligibility (or ineligibility) for governing body members, IMRF expects that a good faith inquiry is made by the public body into the hours required for the position and that the decision is not being based on political motives or desires to make a stance "for or against" elected officials participating in IMRF or pensions in general. The determination made by the governing body should be strictly a factual determination about the number of hours required of the position in question.

Notwithstanding this delegation to the employer, the IMRF Board has the authority to inquire into determinations of eligibility and reserves the right to make independent determinations when eligibility or ineligibility is in question. These inquiries by IMRF generally require the submission of probative evidence such as time logs, calendars, job descriptions, phone records, affidavits and any other evidence of hours worked. Arguably salary would also be somewhat probative as a high salary could indicate more hours, where a low salary would indicate less hours. In your situation, you are legally prevented from decreasing salary during a term of office but your ordinance 5390 decreasing the salary attached to the office in the future indicates that the office has already ceased requiring the additional hours. Any inquiry by IMRF would result in a final administrative decision which would be appealable under the Administrative Review Law.

Please be reminded that bouncing a position in and out of IMRF will definitely raise some red flags. Therefore, if it is your governing body's determination that the position of Village President is removed from participation in IMRF due to a decrease in the hours required for the position, in order for that position to be recertified as eligible in the future, there would need to be clear evidence that something significant related to the position has changed and that additional hours are once again necessary.

Please let us know if there are any other questions you have regarding this or any other topic.

Sincerely,

Beth Janicki Clark and Vladimir Shuliga, Jr.

Beth Janicki Clark
General Counsel
Illinois Municipal Retirement Fund
2211 York Road Suite 500
Oak Brook, Illinois 60523—2337
630-368-5365
bclark@imrf.org

Vladimir Shuliga, Jr.
Associate General Counsel
Illinois Municipal Retirement Fund
2211 York Road, Suite 500
Oak Brook, Illinois 60523-2337
630-706-4517
vshuliga@imrf.org



From: Dennis G. Walsh <DGWalsh@KTJLAW.com>
Sent: Thursday, October 31, 2019 9:31 AM
To: Beth Janicki Clark <bclark@imrf.org>
Cc: George Koczwara <gkoczwara@orlandpark.org>
Subject: IMRF Memo 10-30-19

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Beth, It was good talking with you this morning. It is unfortunate that IMRF will be unable to attend the Village Board meeting on Monday. With that being said, we would respectfully request that IMRF provide its assistance and review the attached memorandum prepared by the Village Manager which sets forth our understanding of the effects of rescinding and/or adopting IMFR related resolutions. Please let me know as soon as possible whether anything in the attached memorandum is inaccurate Thank you very much, Dennis