



**MINUTES OF THE REGULAR MEETING OF THE BOARD OF TRUSTEES
ARKANSAS STATE POLICE RETIREMENT SYSTEM
FEBRUARY 18, 2010**

The regular meeting of the Board of Trustees of the Arkansas State Police Retirement System was held on Thursday, February 18, 2010 at 10:00 a.m., in the 4th Floor Conference Room, 124 West Capitol, Little Rock, Arkansas. Commissioner John Allison presided.

QUORUM PRESENT:

Mr. Allison recognized the presence of a quorum.

BOARD MEMBERS PRESENT:

- Mr. John W. Allison, *Chair, State Police Commissioner*
- Sergeant Brant Tosh, *ASP Tier II*
- Corporal Blake Wilson, *ASP Tier I*
- Mr. Kirk Bradshaw, *Citizen at Large*
- Mr. Donnie Underwood, *Citizen at Large*
- Dr. John Shelnett, *designee for Mr. Richard Weiss, Director Dept. of Finance & Administration*

BOARD MEMBERS ABSENT:

- Mr. Martin Silverfield, *Vice-Chair, Citizen at Large*

VISITORS PRESENT:

- Capt. James Hall, ASP
- Ms. Erika Gee, Attorney General's Office
- Ms. Traci Boyd, Legislative Audit
- Mr. Jody Carreiro, Osborn, Carreiro & Associates, Inc.
- Mr. David Clark, Director of LOPFI (*came late*)

STAFF:

- Ms. Gail H. Stone, Executive Secretary, Arkansas State Police Retirement System
- Ms. Susan Bowers, Associate Director of Investments, APERS
- Mr. Jay Wills, Attorney Specialist, APERS
- Ms. Pam Stroud, Member Services Manager, APERS
- Mr. Bill Dull, Chief Fiscal Officer, APERS
- Ms. Linda McGrath, Executive/Administrative Secretary, APERS

TRUSTEE ANNOUNCEMENT:

Mr. Allison announced that Mr. Silverfield had been appointed to the Alcohol Beverage Control Division and had resigned from the ASPRS Board. He assumed that the Governor would be appointing Mr. Silverfield's replacement.

NEWS MEDIA NOTIFIED:

A letter of notification of the Arkansas State Police Retirement System Board meeting was sent to the Arkansas Democrat-Gazette, the Associated Press, Television Station KLRT/FOX16, Radio Station KARN, and Radio Station KAAY. This letter of notification is pursuant to A.C.A 25-19-101 (Act 93 of 1967) as amended-The Freedom of Information Act.

MINUTES:

A copy of the Minutes from the November 19, 2009 meeting of the ASPRS Board of Trustees was mailed to each member for review prior to the meeting. Mr. Underwood motioned for the November Minutes to be approved and was seconded by Sgt. Tosh. The motion carried.

SUMMARY OF RETIREES:

- December 1, 2009 – Thomas Wicker, Retiring from DROP
- January 1, 2010 – Carol Moore, Beneficiary of Elmer L. Moore
Bonita Swint, Retiring from DROP
Walter Wilburn, Retiring from DROP

February 1, 2010 – Patricia Couch, Beneficiary of Bill V. Couch
Edwin Wolfe, Jr., Retiring from DROP

REQUEST FOR DROP PARTICIPATION:

The Trustees discussed the 4 applicants and Ms. Stone stated that all fulfilled the necessary qualifications needed to enter the DROP.

January 1, 2010 – Robert Mark Batson
John W. Catlett
Victor D. Coleman

March 1, 2010 – Ronald Lee Stayton

On a motion by Cpl. Wilson and a second by Mr. Bradshaw, all four applicants' were approved to enter the DROP.

QUARTERLY REPORT FOR THE PERIOD ENDING DECEMBER 31, 2009 – Presented by Ms. Gail Stone, ASPRS Executive Secretary

Ms. Stone distributed a handout based on APERS investment results. She pointed out the Fund's target allocation and the actual allocation was very close; no rebalancing was required. She then compared how the APERS/ASPRS assets were allocated as opposed to other similar retirement systems. Ms. Stone showed the breakdown of each money manager and the distribution of assets, as well as the investment loss or gain over the last quarter of calendar year 2009. As of December 31, 2009, the funds together had a market value of \$5.16 billion, with ASPRS share being 3.72%, or approximately \$192 million. After benefit and administrative expenses were paid out, the net value dropped to \$181.7 million.

For the last quarter of 2009, the fund grew by 3.42%; very close to its 3.44% benchmark. For the last twelve months, the fund exceeded its benchmark by 0.77%, growing by 22.38%. This ranked the fund in the top quartile of all public funds for the last year, however the ranking dropped to the bottom third going out over 2-5 years largely due to the horrible returns in Fiscal Year 2009, which dragged all the numbers down.

Much of the portfolio's lag was traced to the APERS International equities portfolio which had subsequently undergone significant restructuring in late 2009. The new money managers tend to choose higher-quality stocks, which have not been in favor lately. Despite this fact, that portfolio managed to return 33.76% over the last twelve months.

Mr. Allison asked what the recent "low-point" of the fund and Ms. Stone calculated that it had been down to around \$133 million almost exactly a year ago, just before the markets had begun to bounce in March 2009. Dr. Shelmutt requested that Ms. Stone share a copy of the report that she had created for the APERS Trustees detailing how the portfolio money managers had evolved over the last 5 years. She agreed to send this to the Board and reminded them that ASPRS held 3.72% of the portfolio.

Mr. Bradshaw inquired about the negative \$30.9 million listed as "Net New Investment" on the Callan report. Ms. Stone explained that number was payouts in benefits for both APERS and ASPRS. He clarified that he wanted to know exactly how much did ASPRS have going in versus going out, for the quarter and for the year. Ms. Stone directed the Trustees attention to the Financial Statement in their board folder.

FINANCIAL STATEMENTS FOR THE PERIOD ENDING DECEMBER 31, 2009

Ms. Stone explained that this statement showed the growth in ASPRS' Investment Fund with the deductions and contributions listed below. She pointed out there was a total deduction of \$10.3 million: \$10.25 million in benefits paid out and the rest in administrative expenses. At the bottom of the statement it showed the various contributory sources and the amounts collected from them. She stated that the supplemental \$9 million listed was the one-time contribution from the State that was given to the system July 2009 and would not be repeated.

The Insurance Premium transfer of \$3.3 million last June was not reflected on this report as it occurred in the previous fiscal year. Mr. Bradshaw asked what the historical average of this transfer had been and Ms. Stone indicated that it had been slowing climbing due to the decline of

the funded status of the system. She continued, detailing that the Employers Contributions come in monthly, as does the Court Fees and Driver's License Reinstatement Fees; their combined total was roughly \$2.7 million annually and the number was fairly stable.

Dr. Shelnutt asked for clarification on how the Insurance Premium Tax was divided up between the other entities and ASPRS. Ms. Stone explained that there was a formula for how it was distributed to local police and fire departments across Arkansas with the remainder reverting to the state. ASPRS' portion comes from that remainder money and with the current economy there was heavy competition for these funds, especially from the local police and fire departments who would like to get a larger share. Ms. Stone pointed out that in prior legislative sessions, attempts had been made to remove/reduce ASPRS' participation in the Insurance Premium Tax monies and would probably be brought up again in the future. Mr. Allison agreed that everyone was looking for other funding sources and State Police was exploring other possible sources as well, but there was nothing he could share at this time.

Dr. Shelnutt inquired how resolving the Lehman Brothers bankruptcy settlement with the Bank of New York would affect the 3.72% share that ASPRS had in the APERS portfolio. Ms. Stone commented that while she had not considered this question before, she felt that even a settlement of \$8 million would merely result in a rounding error several places to the right of the decimal point and nothing very significant.

OTHER BUSINESS:

Draft Attorney General's Opinion Request – Mr. Jay Wills, APERS Atty. Specialist

Mr. Wills announced that during the previous week, he had been visited by several members who had a problem with the DROP program. He explained that prior to 2005, the rate of return for the DROP was set at 2 points below the rate of return of the fund. This resulted in some troopers receiving a significant (28-30%) rate of return on their DROP accounts during a bull market. During the 2005 Legislation session, the DROP interest was set to the Actuarial Assumed Rate of 7.75% and troopers entering the DROP after the effective date of this legislation, would receive that lower rate. This resulted in several troopers entering the DROP prior to the effective date in an effort to capture that larger rate of return. However in 2007, the Legislature passed an amendment to the statute removing the fixed rate and giving the ASPRS Board the authority to set the rate of return for DROP accounts (which resulted in a further reduction of the DROP interest rate).

Mr. Wills stated that he told those troopers that it was his opinion that the State could not take away benefits that have already been accrued, but the Legislature could always change its mind prospectively. He felt the same legal process should be applied to this question, but had been asked to seek an Attorney General's Opinion at the request of several troopers. He supplied the Trustees with a copy of his proposed opinion request.

Cpl. Wilson explained to the rest of the Board that while this question of interest rates did not affect him personally, it did impact approximately 22-25 other troopers who felt like they were told one thing and given something else. He felt that seeking an A.G. Opinion would go a long way towards appeasing both sides. Cpl. Wilson said it had been understood by these troopers if they entered the DROP before the effective date of this legislation, that they would be locked in at the market rate minus 2% for their entire DROP period. Some of these individuals had entered the DROP much earlier than they would have normally, just to capture those possible rates of return. They were under the impression that this was a promise or contract of what they would receive when they entered the DROP. This "misunderstanding" could potentially result in a loss of \$50-80,000 per individual when they finally exited the DROP and some had said they would not have elected to enter the DROP when they did had they know their interest rate might be greatly reduced in the future.

Mr. Allison stated that when the Board had set the rate to the current 3.25%, they had not realized the impact that this would have on troopers currently in the DROP. Cpl. Wilson pointed out that the Board now had the power to adjust the rate of return without going to the Legislature and had said at the time it was set to 3.25% that they would revisit the decision in six months. It was now more than six months, so perhaps it was time to discuss the rate again. Many troopers felt that if APERS could pay its DROP participants 6%, that ASPRS should be able to pay 5%. Mr. Allison noted that the APERS fund was in better financial condition than the ASPRS fund, but that the Board would seek the A.G. Opinion and go forward from there.

Dr. Shelnutt asked for an opinion from Staff regarding the "contract" issue and Ms. Stone explained that the monthly benefit was the contract, with the amount guaranteed at the time of

retirement. The money designated for DROP accrues an “interest credit” and is not part of the contract the employees have with the state. Mr. Wills explained further how this guaranteed that vested employees would receive the benefits they had earned to that date and the Legislature could not deny those benefits retroactively. However, they were always free to change the benefits prospectively.

Ms. Stone used several recent DROP payouts to highlight the strain the high interest rates had to the system. February 1, 2010, the system paid out approximately \$535,000 to a single individual and would be paying out in excess of \$1 million combined to just two individuals because of the portion of DROP they had that accrued market rate minus 2%. She cautioned that there would be 16 people coming out of the DROP in 2010 and this would impact the financial status of the ASPRS in a serious fashion. Ms. Stone admitted that this was not normal and these large payouts were extremely date-specific, depending on when someone had entered the DROP and if they had accrued any interest during the huge bull market of 2003-2007.

Cpl. Wilson added that when he first was elected to the Board the DROP interest was still set at 2% below the market rate. Shortly afterwards, the Board took decisive action to shut that door through legislation, and institute a more stable and reasonable rate of interest. The problem that was occurring was that those troopers who were already in the DROP when the rate changed felt that they being denied money that they were promised when they signed up for the DROP.

In light of this confusion, Mr. Wills had crafted a request of an Attorney General’s Opinion that basically asked: “What is the appropriate rate of return for those troopers who entered the DROP prior to the effective date in 2005 in reliance upon the apparent statutory promise that they would receive that higher rate of return?” Mr. Wills guessed that it might take 60 days from the time the question was submitted until they got a response. Cpl. Wilson commented that once the opinion had come back, he would like to revisit the issue with the rest of the ASPRS Board. Mr. Allison stated he could see the argument on the disparity between APERS offering 6% and ASPRS only offering 3.25% interest on DROP accounts.

Dr. Shelnett asked about having the actuaries look at the cost neutrality of the DROP program, but Ms. Stone said that was a great idea but pointed out that the system was more than halfway through the Fiscal Year and the Board would have a much truer picture if the waited until after June 30th, so as to utilize the most current data. Dr. Shelnett clarified his request saying that Highway Retirement had a document showing a timeline on the cost of their DROP on a year-by-year basis for comparison. Ms. Stone was intrigued by the idea and pointed out that since both systems used the same act actuaries, it could probably be done.

Mr. Allison instructed Mr. Wills to go ahead and submit the draft of the opinion request to the Attorney General’s office.

ASPRS Members Purchase of Military Service

Cpl. Wilson stated that at the last Legislative session, an Act was passed that allowed APERS members to buy up to five years of military time. Ms. Stone explained to the ASPRS Trustees the concept of “buying military time” as it pertained to APERS system. The cost was highly variable based on the individual’s circumstances i.e. person’s current age, salary, age at time of service, but the average was about \$33,000 to buy a full five years’ worth of service in the retirement system. Ms. Stone assured the Board that this benefit was fairly cost-neutral to the system since it was calculated for each individual.

Cpl. Wilson explained to the other Trustees that he’d been assure that the State Representative who wrote the law said that he did not mean to exclude State Police from receiving this benefit, it was just that his focus had been on APERS. Some of the ASPRS members had approached Cpl. Wilson and asked if the law could be amended to include St. Police. After a short discussion, Mr. Underwood for Cpl. Wilson to approach his State Representative and see about getting the law amended to include ASPRS members. Sgt. Tosh seconded and the motion passed.

Renewal of Professional Service Contracts

Ms. Stone explained that since the money managers, custodial banking and investment consultants were now contracted through APERS, this Board had no need to approve them, however ASPRS still had their own Actuarial Services whose contract needed annual approval. There was a short discussion about how the various liability streams were different from APERS.

Cpl. Wilson motioned to approve the contract for Gabriel Roeder Smith in the amount of \$40,100 for Fiscal Year 2011. Mr. Bradshaw seconded the motion and it carried unanimously.

Annual Approval for Board Travel Reimbursements

Ms. Stone explained that according to *ACA §25-16-902* during the first meeting of each calendar year, the Board will approve travel reimbursement rates for Trustees performing official Board duties. Cpl. Wilson motioned to approve reimbursement for travel under the state's guidelines. Mr. Underwood seconded the motion and it passed unanimously.

Fiduciary Liability Insurance

When asked the status of Trustee Insurance, Mr. Wills commented that due to an unsupported 20% rate hike, APERS' Trustees had elected to drop their coverage and were not pursuing the matter any further. He did not feel that the ASPRS Board had any liability exposure unless they acted outside the course and scope of their duties as a board member.

Litigation Update: McClemore vs. Weiss

As of the first of the year, the Judge was asking for simultaneous motions for summary judgment once the briefs were submitted. Since there are no facts in dispute, the judge feels capable of deciding the case once the briefs are in. He would let the Board know as soon as there were any further decisions in the case.

NEXT QUARTERLY BOARD MEETING:

The next quarterly meeting of the ASPRS Board will be held on May 20, 2010 at 10:00 a.m. at State Police Headquarters in the Commission Room.

ADJOURNMENT:

There being no other business the meeting was adjourned.

COMMISSIONER JOHN W. ALLISON
Chair, Arkansas State Police Board of Trustees

GAIL H. STONE
Executive Secretary