

MINUTES OF THE REGULAR MEETING OF THE BOARD OF TRUSTEES
ARKANSAS STATE POLICE RETIREMENT SYSTEM
MAY 19, 2011

The regular meeting of the Board of Trustees of the Arkansas State Police Retirement System was held on Thursday, May 19, 2011 at 10:00 a.m. in the Arkansas State Police Commission Room at the State Police Headquarters, #1 State Police Plaza Drive, 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*
Mr. Kirk Bradshaw, *Vice Chair, Citizen at Large*
Lieutenant Brant Tosh, *ASP Tier II*
Corporal Blake Wilson, *ASP Tier I*
Mr. Donnie Underwood, *Citizen at Large*
Mr. Joe Miles, *Citizen at Large*
Dr. John Shelnuitt, *Designee for Mr. Richard Weiss, Director Dept. of Finance & Administration*

VISITORS PRESENT:

Colonel J. R. Howard, ASP
Lt. Col. Tim K'Nuckles
Major Kathy Sparks, ASP
Lt Glenn Sligh, ASP
Capt. Stan Witt, ASP
Capt. Myron Hall, ASP
Ms. Janet Chappell, ASP
Ms. Janelle Eyyan, Bureau of Legislative Research
Ms. Erika Gee, Attorney General's Office

STAFF:

Ms. Gail H. Stone, Executive Secretary, Arkansas State Police Retirement System
Ms. Michele Williams, Deputy Director, APERS
Ms. Susan Bowers, Associate Director of Investments, APERS
Mr. Carlos Borromeo, Chief Investment Officer, APERS
Mr. Bill Dull, Chief Fiscal Officer, APERS
Ms. Linda McGrath, Administrative Specialist, APERS

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 February 17, 2011 meeting of the ASPRS Board of Trustees was mailed to each member for review prior to the meeting. Mr. Miles motioned for the February Minutes to be approved; he was seconded by Lt. Tosh. The motion carried.

SUMMARY OF RETIREES:

March 1, 2011 – Jeffrey Crow
Ruth Pollock, Beneficiary of Donald L. Pollock
Verma Pollock, Beneficiary of Donald L. Pollock
Frank Tappin
Sharon Wallis, Beneficiary of Wilson B. Wallis
Charlie Caldwell

April 1, 2011 – Lola Powell, Beneficiary of George E. Powell
Neva McKewen, Beneficiary of Charles P. McKewen
Theresa Alcon, QDRO
Carey Lovaas, Tier I Disability

May 1, 2011 – Laverne Miller, Beneficiary of William C. Miller
Diane King, Beneficiary of Bill E. King

DROP PARTICIPANTS WHO ARE RETIRING:

April 1, 2011 – Terry Bolton

May 1, 2011 – Gloria Cook

APPROVAL OF DROP APPLICANTS:

July 2011 – Kelly K. Watkins
Tate Floyd, III

On a motion by Cpl. Wilson and a second by Mr. Bradshaw, the Trustees voted unanimously to approve both DROP applications.

QUARTERLY REPORT FOR THE PERIOD ENDING MARCH 31, 2011 – Presented by

Ms. Gail Stone, ASPRS Executive Secretary

Ms. Stone detailed the fund's actual Asset Allocation as opposed to its Target Allocation. Due to the recent strong movement in the stock market, the fund was overweight in Domestic Equity and underweight in Alternatives and Domestic Fixed Income as APERS Trustees continue to deliberate further diversifiers within those asset classes. She reminded the Board that the fund needed to recognize an 8% annual return in order to make projected payouts and Fixed Income was projected to bring in less than half that amount. Hedge Fund of Funds, Master Limited Partnerships (MLPs), Real Estate and Global Tactical Asset Allocation (GTAA) are some of the vehicles under consideration. Currently, the fund has huge equity exposure at risk to the market that Callan is working to dampen, however for the last quarter this exposure paid off handsomely. Over the past twelve months the fund has returned 15.56%, with the past three months alone adding over 5%.

APERS ranked in the top 12% for returns for the past year and in the top 26% of all similarly-sized public funds for the past 2 years. When adjusted for the differences in Asset Allocation, the portfolio consistently ranked in the top half of its peers for the last five years and in the top quartile for the last 12 months.

FINANCIAL STATEMENTS FOR THE QUARTER ENDING MARCH 31, 2011:

At the end of the last quarter, ASPRS portfolio was valued at \$228.9 million; gaining almost \$9.5 million over the past three months. Contributions added \$6.8 million, for a total income for the quarter of \$16.3 million. Over that same time period, the fund paid out just over \$17 million in benefits. Ms. Stone pointed out that even in the face of 25% returns; ASPRS was operating at a loss. She also added that as of July 1, the fund will pay out an additional \$3.3 million in DROP benefits. This truly highlighted the importance of Act 718 of 2011 to help supplement the income to the fund.

Mr. Allison asked if this meant the fund had to consistently return over 25% just to keep even and Ms. Stone agreed until this large group of officers currently in the DROP finally left service. Theoretically, in 2012, the DROP payout will be \$4.6 million; in 2013 it will be \$5.1 million, with the payout sharply decreasing in 2014. This is based on a DROP interest 3.25%.

Mr. Allison pointed out that the fund had managed to crawl back up from a low of \$133 million. Ms. Stone commented that the fund was currently at an inflection point from which, depending on the markets, could either mean either “we’re breathing again” or “going down the tubes”. She strongly desired to mitigate this risk in the portfolio and was working hard with Staff and Callan to place it on firmer footing.

OTHER BUSINESS:
Legislation Update:

Ms. Stone pointed the Trustees had been provided a booklet with the complete text of the two Acts that passed in the 2011 Legislative Session that impacted ASPRS: Act 562 and Act 718. Act 562 allows Troopers to buy monthly increments of military service time instead of complete years. This Act takes effect on July 27th and gives ASPRS members the same ability to buy Military time as APERS members.

Cpl. Wilson motioned to approve the amended regulation and was seconded by Mr. Miles. Motion carried.

Litigation Update – Ms. Gail Stone, ASPRS Executive Secretary

Since Mr. Wills had to leave early on a family matter, Ms. Stone updated the Board on pending ASPRS litigation. Ms. Trisha Bell, ASPRS representative over at the Attorney General's Office and the attorney for the litigants are currently arguing over certification of the class. Previously, the argument had been if there had been sufficient class notification. As soon as these technical arguments are resolved, Staff will be working on a motion to dismiss.

DROP Interest Appeal – Lt. Glenn Sligh

Ms. Stone stated that yesterday Staff had received a letter from Lt. Sligh arguing that interest should not be lowered on DROP accounts. Act 38 of 2011 was a technical bill with language inserted in an attempt to head off further *McLemore v. Weiss* style lawsuits by stating specifically that the system has sovereign immunity. This puts a wrinkle in how Lt. Sligh needs to approach the Board. He needs to lodge a formal appeal to the ASPRS Board, which needs to listen and render a decision. Should the Board decide against his appeal, then Lt. Sligh has the right to go to Court. But without a prior hearing and decision from the ASPRS Trustees, the Court will turn back his suite.

Staff had researched this and went back to previous legislative decision effecting DROP Interest and discovered that in 2005, there were 65 Troopers in the DROP. In 2007, when the next changes were made, there were 55 Troopers in the DROP. Ms. Stone surmised that what Lt. Sligh was appealing had huge implications for a lot of Troopers and a large amount of money. She reminded the Board of the annual DROP payout amounts she had detailed earlier in the meeting and said that what Lt. Sligh wanted to do could easily double those amounts.

Ms. Stone stated that she has approached the Attorney General's Office to render an opinion and asked specifically if the DROP interest rate was contractual or flexible for the Board to decide, and their answer was "It depends." So this will be a matter for the Courts to decide. She explained that while the Board would not be arguing today on the substance of the appeal, this is the procedural form that such an appeal must take. Without ASPRS legal representation on hand, Ms. Stone stated the Board was not prepared to hear such an appeal.

Lt. Sligh stood and spoke to the Board noting that the DROP interest rate reduction had impacted between 44-65 Troopers and was constantly being discussed around ASP circles who felt they have never gotten a concrete answer from the Board. He touched on the 2005 Legislative changes and how two bills had countermanded each other. He explained how many Troopers felt pushed to enter the DROP at that time in order to get the higher interest rates, some even taking a penalty on future raises that would be excluded once they entered the DROP.

Lt. Sligh complained that he (and others) got the impression from talking to APERS Staff that their DROP interest rate was "locked in" when they signed the retirement forms and they felt that this lowering of the interest rate after that fact was basically breaking their contracts. He asked the Board to consider this issue and make a public determination. Lt. Sligh added that it was not his intention to harm the fund, but at the same time these Troopers had made decisions on their futures based upon information that turned out to be false.

Mr. Allison stated that it was not the Board's intention to harm the individuals in the DROP, but to save the integrity of the ASPRS fund long term so others could enjoy some of the benefits.

Mr. Miles asked Lt. Sligh if he has gotten a legal opinion on if this was actually a "contractual obligation" in the legal sense or if this was just how he (and others) perceived it. Lt. Sligh replied that he has not sought legal advice on definition of the term, but it was how he had interpreted the papers he had signed. Mr. Miles stated he would like to see the actual retirement forms which Lt. Sligh referred to and have legal determination on whether or not the language constituted a "contractual obligation."

Ms. Stone explained that the next step would be to convene a formal hearing with Staff Attorney laying out the case from Staff's viewpoint, including the history of the case and how it got to this point. Mr. Wills would give his legal opinion on if the DROP papers constituted a "contractual obligation" and ascertain what exactly Troopers were told vs. what they talked about amongst themselves. This would assure that the Board was given a full and complete picture of both Staff's and Lt. Slight's cases, before being asked to render a decision. If that decision was adverse to what the Troopers desired, they would then have the option of filing for a Summary Judgment in court. This would then answer what the Attorney General was unable to do, since there has never been a good precedent set to follow.

Ms. Stone distributed copies of the AG's Opinion on the issue and commented that because of the complexity of the issue, it might be impossible to have all the documents and witnesses lined up before the August meeting and the hearing might need to be postponed until the November Board meeting.

Mr. Miles motioned to table discussion on the appeal until such time as the materials were ready for presentation so that the Board could render a valid opinion, noting that this might not be until the November Board meeting. Mr. Bradshaw seconded it and the motion carried.

Ms. Stone pointed out that if the Courts ruled in the Troopers favor, Staff would be obligated to go back and compensate everyone that had been affected, even those who had already withdrawn their funds from the system.

Expiration of Trustee Miles' Term – July 1, 2011

Mr. Allison noted that Mr. Miles' term would be expiring before the next Board meeting and he asked if Mr. Miles wanted to continue serving on ASPRS' Board. Mr. Miles stated he wished to continue serving and Ms. Stone offered to draft a letter to the Governor requesting his reappointment. Mr. Allison thanked Ms. Stone and stated that he would also write such a letter.

Options for DROP Payout: Annuity vs. Lump Sum

Cpl. Wilson reminded Ms. Stone that she had offered to give a presentation to the Troopers on the various options of DROP payout. Ms. Stone commented that some of those ideas were coming from Mr. Jody Carreiro and she needed to get with him. She stated that she would very much like to give such a presentation; she would coordinate the details and get back with Cpl. Blake. Several of the Board expressed an interest in hearing about such options as well. Ms. Stone promised to get the information together by the August Board meeting.

NEXT QUARTERLY BOARD MEETING:

The next regular quarterly Board meeting of the Arkansas State Police Retirement System will be held on August 18, 2011 at State Police Headquarters in Little Rock, Arkansas.

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