City of Springfield

Report

Responses to "Burning Issues"

Presented to Police/Fire Citizen's Task Force

May 20, 2009

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"BURNING ISSUES"- Questions Provided to Committees/Teams

<u>Team One</u>

1-1 Convert City Utilities into a publically held corporation, whose stock can be either held and its dividends used to pay or support the pension funds, or can be sold in part and the sales proceeds used to pay or support the pension funds, or both.

See attached document from City Utilities (see Attachment A).

1-2 Are there "third rails" that we must avoid, and/or "sacred cows" that we need to be aware of?

The scope of the Task Force's review as defined by City Council is broad. However, in terms of consideration of available sources of funds, some revenue sources, such as monies generated by sources outside of the City general fund, such as City Utilities, or enterprise funds such as the sanitary sewer funds, Parks or Airport revenues, are dedicated to those activities and may not be accessible without major legal changes, or amendment of the City Charter. Some sources, such as Airport revenues, may not be subject to diversion for any other purpose by federal or state law. Also, as set out in the response to Question 2-3, the idea of reducing pension benefits for current employees is likely to be met with substantial objection by the police and fire employee groups.

1-3 Task Force should look into other City's benefit plans for their firemen and police. The comparison should be made with cities of about our same size in the Midwest.

A study was conducted in 2006 (see Attachment B). A comparison was made with the 11 cities used for other benchmarking purposes as well as the LAGERS L-11 plan. The study looked at the major components of the plan, but not all aspects. The results were previously distributed, but in general, the Tier I plan was slightly above average in some areas, slightly below average in others. The Tier II plan tended to be slightly below average in most areas, but not significantly.

1-4 Find a solution to the pension issue that is "passable" by the voters.

Staff agrees that this is a burning issue that must be resolved. Finding a recommended solution (or set of alternate solutions) for Council's consideration that is "passable" by the voters is part of the charge of this Task Force.

1-5 Create a solution where we are not at risk with this same problem arising in the future.

Staff agrees that this is a burning issue that must be resolved. Creating a recommended solution (or set of alternate solutions) for Council's consideration that resolves the problem in the long-term is part of the charge of this Task Force. The Task Force is to consider all reasonable options.

1-6 This whole issue has created a distrust among many of the City's constituents. Work toward rebuilding the trust back to the people where the city can start to grow and improve everyone's quality of life.

Staff agrees that trust in government at <u>all</u> levels is very low. Staff very much desires to significantly improve our citizen's level of trust in their City government and is taking initiatives to accomplish that. The creation and support of this Task Force is one of the steps the City is taking toward improving this trust relationship.

1-7 Police officers and Fire Fighters that become vested and are eligible to draw a pension or are active participants need to claim some form of "ownership" of their fund and its prudent management. I say this because I sense those participants now feel a sense of entitlement more than responsibility to the fiduciary health of this fund. To my knowledge, whenever some form of cut in benefits or other measure may be adopted or discussed to assist in the prudent management of the pension fund, there seems to be an outcry of "unfair" by those affected rather than an accepting attitude. Every pension fund in the country has been through rough times and fought to minimize losses to the plan by adjusting benefits when necessary. Nobody likes it, but it does work and is one way the participants can help themselves and their plan. The trick, however, is finding that common ground where cuts are acceptable, but not overly penal when considering the funding levels of the plan. Overall I believe that the citizens of Springfield must see that the participants are willing to do this and not shift the burden wholly on the city and the taxpayers. It will lend credence to the need for a tax or other measure should it become necessary to assist in the overall funding process, and not place the burden solely on a tax as was previously attempted.

The City's police officers and firefighters definitely have "ownership" of their pension fund and its prudent management. Police officers and firefighters resisting a reduction of benefits should not be a surprise. Expecting these public safety employees to be "accepting" of benefits reduction is not reasonable. However, many of these employees actively participated (via their professional associations) in support of the February sales tax initiative. Thus, many of these employees are willing to get engaged in what they believe to be a reasonable solution.

- Reducing benefits that have already been earned would be illegal.
- Reducing benefits that have been stated, but not yet earned, would require a change of the City Charter via a vote of the citizens. However, I encourage the Task Force to consider that these employees planned for these benefits when they were hired. Also, please consider the impact on public safety employee retention if benefits were to be changed

from this point forward – I suspect we would lose our best and brightest employees who would migrate to other communities.

- The Return of Contribution's benefit was eliminated with the changes to Tier II benefits. The City's legal opinion is that this benefit for Tier I employees could be changed going forward and without a citizen's vote; however, both Associations disagree with this opinion. Anything that does not affect a person's final average salary is not considered a pension benefit by the City Attorney.
- Changing the benefits package for new hires from this point forward would be feasible. The prior proposal was to put all new hires (if the sales tax had passed) into the Statewide LAGERS retirement system. However, putting new hires into a new system (LAGERS or any other) will effectively close the existing plan. See the response to question 2.2 for additional details about the impact of closing the existing plan and the resulting impact on the City's budget.

1-8 What is the approximate value of City Utilities?

See attached document from City Utilities (see Attachment A).

1-9 What is the turnover rate of police officers and fire fighters, including years of service, comparing 2004 and prior versus post-2004.

2008	Avg # of Empl	Separated	Yearly Avg		2004	Avg # of Empl	Separated	Yearly Avg
Fire	208	7	3.37%		Fire	189.5	9	4.75%
Police	305	31	10.16%		Police	317	22	6.94%
2007	Avg # of Empl	Separated	Yearly Avg		2003	Avg # of Empl	Separated	Yearly Avg
Fire	209.5	5	2.39%		Fire	179.5	10	5.57%
Police	312.5	28	8.96%		Police	291.5	27	9.26%
2006	Avg # of Empl	Separated	Yearly Avg					
					2002	Avg # of Empl	Separated	Yearly Avg
Fire	208.5	11	5.28%					
Police	322	28	8.70%		Fire	173	8	4.62%
					Police	268	31	11.57%
2005	Avg # of Empl	Separated	Yearly Avg					
					2001	Avg # of Empl	Separated	Yearly Avg
Fire	208	17	8.17%					
Police	330	28	8.48%		Fire	165.5	7	4.23%
					Police	242	31	12.81%
					2000	Avg # of Empl	Separated	Yearly Avg
					Fire	156.5	14	8.95%
					Police	214.5	21	9.79%

Turnover rates for the above separations are included in the Appendix as Attachment C.

1-10 Attached is a draft of a chart. Please provide the information for each category.

COMPARISON OF RETIREMENT PLANS				
	Employer	Employee	Social	Benefits
	Contribution	Contribution	Security	Multiplier
Police and Fire Tier 1	52.36%	11.16%	No	2.80%
Police and Fire Tier 2**	52.36%	8.50%	No	2.50%
City Employees (LAGERS)	18.10%	0.00%	Yes	2.00%
City Utilities (LAGERS)	20.10%	0.00%	Yes	2.00%
R-12 Schools- Certified Teachers*	13.00%	13.00%	No*	2.50%
Missouri State University	12.75%	0.00%	Yes	1.70%
* less than 31 years of service				
** hired after 2006; receive reduced benefits				
	25 Years of Service	25 Years of Service		20 Years Later
	% of Final Average Salary	Monthly Benefit @		w/3% Cola***
	Paid at Retirement	$50,000 Final Average Salary		
Formula:	-	Multiplier x Years of Service x Final Average Salary		
Police and Fire Tier 1	70%	$ 35,000		$ 63,213
Police and Fire Tier 2**	63%	$ 31,250		$ 56,441
City Employees (LAGERS)	50%	$ 25,000		$ 45,153
City Utilities (LAGERS)	50%	$ 25,000		$ 45,153
R-12 Schools- Certified Teachers*	63%	$ 31,250		$ 56,441
Missouri State University	43%	$ 21,250		$ 38,380
* less than 31 years of service				
** hired after 2006; receive reduced benefits				
*** Tier 1 employees receive a 3% COLA - other plans are dependent on decision of the Board of Trustees.				

1-11 What Southwest Missouri communities have police officers and fire fighters in LAGERS?

LAGERS is a defined benefit plan.

Employers with both Police & Fire in LAGERS:

City of Neosho	City of Republic
City of Aurora	City of Lamar
City of Bolivar	City of Hollister
City of Webb City	City of Mountain Grove
City of Branson	City of Lebanon
City of Monett	

Employers with Fire only in LAGERS:

Nixa Fire Protection District
Ozark Fire Protection District

Employers with Police only in LAGERS:

Greene County	City of Strafford
City of Ash Grove	City of Sparta
City of Mount Vernon	City of Fair Grove
Lawrence County	City of Willard
Wright County	City of Ava
City of Forsyth	City of Kimberling City
Taney County	City of Ozark
City of Stockton	City of Nixa
City of Marionville	City of Mountain View
Christian County	City of Nixa

1-12 Please provide the workers' compensation rate schedule for City employees.

See Attachment D for a schedule that provides the workers' compensation rate for each position job title. The rate is applied to each $100 of payroll dollars.

Team Two

2-1 What is the current level of underfunding of the Police and Fire Pension and how rapidly is it deteriorating?

Please see page 14 of the Actuarial report (Tab 4 within your binder). At the end of the City's previous fiscal year (June 30, 2008), the unfunded liability was $154,799,686. The chart provides the funding progress from 1994, when the unfunded liability was $14,533,802. This chart also provides some insight into how fast the liability has grown in relationship to the assets. The liability calculation takes into consideration many factors; and, as such, the numbers for the current fiscal year will not be available until October, 2009. Therefore, there is insufficient information to give you an accurate number for the current level of underfunding.

The assets at March 31, 2009 were valued at $91,882,252 and we will be depositing the funds from the AT&T lawsuit settlement for approximately $10.2 million by June 30, 2009. With these assets, and if the liabilities remained static as of June 30, 2008 at $295,579,925 (of course, they do not), the unfunded liability for the plan currently would be approximately $193.5 million based on market value of assets.

One other point that needs to be taken into consideration, however, is that when the actuary performs his calculations as of June 30, 2009, his analysis will use an asset value that recognizes only a portion of this year's investment losses plus a portion of the last three year's investment gains and losses. This allows the effects of market volatility to be "smoothed" (or spread) over a four-year period when calculating the actuarial value of assets. This actuarial value of assets is used in the determination of the actual funding status rather than the market value at June 30 as used above. Therefore, it is very important to keep in mind the differences between an actuary's analysis and one that is estimated based on market values and a liability number that is a year old.

2-2 How important is it to move the pension plan into LAGERS, and what would be involved in doing that?

On October 24, 2008, a Task Force reported on the feasibility of providing future new hires with their pension benefits under the LAGERS system. The Task Force's report is included in your binders under Tab 10. In addition to the report, several additional facts should be shared that may assist with answering this question as presented.

A. First, LAGERS will only agree to enroll new hires. They have stated that they will not convert current employees due to their own past experiences working with other jurisdictions in trying to move current employees to LAGERS. Needless to say, their experiences were not positive. They did, however, agree to take the TIER II employees (those hired after June, 2006) if they voluntarily terminated and were hired back as "new" employees. The City would have to determine how they would be made whole for any service credit earned to that point. LAGERS was willing to make this exception since these employees were not yet vested (had rights to a benefit under the Plan) and these employees, in most cases, seemed willing to move to LAGERS since the LAGERS benefit appeared to be a better choice for many than the TIER II plan. The choice to move to LAGERS would have been voluntary on the part of each TIER II employee. It was not contingent upon the whole group making an election.

B. Second, placing new hires into LAGERS would require "closing" of the current pension system. When closing the current system, many factors come into play which would require a substantial funding source to meet the liabilities of the closed plan for the next 50 to 75 years. The following are some points for your consideration related to a closed plan:

1. If the Plan were closed, it would be a "soft freeze", meaning the Plan would not be open to new participants, but existing employees would still earn benefits until they retire and the Plan would still pay benefits until the last employee or dependent dies, possibly in 75 years. All of the administrative cost, including actuaries and investment consultants, would continue.
2. Freezing a Plan changes the age profile of the Plan. You no longer have new, younger employees entering the Plan. You lose the mix of younger, middle-aged and retired participants.
3. Because your Plan is "aging", the investment mix needs to be changed much as an individual would change the asset allocation in a personal 401-K as retirement approaches. More of the assets will have to be invested in lower-risk/lower-return investments.
4. As the number of active employees decreases and the number of retirees receiving payments increases, there is a smaller payroll base to spread the contributions (i.e., fewer employees supporting more retirees).
5. The accounting rules will change. The unfunded liability is now amortized over an open 30-year period. If the Plan were closed, the amortization method is changed and the liability will be amortized over a shorter period, thereby driving up the cost.
6. Closing the Plan can easily cost the City more than leaving the Plan open.
7. The City would need to purchase a separate disability policy for Police and Fire. See Question 2-18.

C. The benefits of TIER I employees (hired prior to 6/1/06) are unlike any plan under LAGERS; therefore, matching it to a LAGERS benefit is not possible, even if LAGERS agreed to accept Tier I employees.

D. The pension benefits of current Tier I and II employees could not be changed without a vote of the citizens of Springfield.

E. Please note the letter contained on the last two pages of Tab 10 within your binder. This letter shows the initial estimated contribution rates for the City of Springfield Police and Fire Departments for new hires. The rates for LAGERS participation for new hires are substantially lower than the City's current contribution rate of 50.21% of police and fire payroll. The contribution rate will increase by $400,000 to 52.36% of police and fire payroll on July 1, 2009.

2-3 What flexibility do we have to change the provisions of the pension plan itself, in terms of benefits and contributions?

A. Employee contributions may be increased or decreased by the City Council amending the relevant ordinance. City management may be required to engage in collective bargaining negotiations with employee representatives prior to changing the contribution rates, but prospectively changing the employee contributions, for either current employees and/or new hires, is permissible. Ordinances attempting to limit refund of employee contributions paid in prior to the effective date of the ordinance, or retroactively assessing additional employee contributions for service time previously worked, would likely be invalid.

B. Employer contributions are set by City Council as a part of its budget process, subject to recent state statutory requirements regarding making the minimum actuarially recommended annual payment under certain conditions. An argument has also been raised that the City Council may have a duty under state constitutional provisions and case law precedent to pay each year not less than the minimum actuarially derived annual employer contribution. This is not certain, however, and in the opinion of Management, after examining the relevant legal authority on the issue, is an open question with respect to this plan.

C. Pension plan benefits may be increased for current employees or new hires by City Council action alone. Benefits may not generally be increased for employees retired prior to the effective date of the increase, except for limited cost of living increases. Benefits may also be reduced by City Council action for employees who commence employment on or after the effective date of the reduction ordinance. With respect to reduction of benefits for current employees and retirees, legal interpretations differ on the application of the applicable law and City Charter Section 6.8, which requires such an action to be submitted to and approved by a vote of City citizens. The police and fire unions have taken the position that the City, even with a popular vote, may not reduce plan benefits for anyone except employees hired after the effective date of the reduction. Management recognizes that this question is open to interpretation; however, our conclusion is a little more nuanced. Outside of a municipal bankruptcy situation, we believe that a reasonable interpretation of the governing law may prohibit, even with a popular vote, any reduction in benefits for employees already retired as of the date of the reduction ordinance. A reduction in benefits of current employees for service time already accrued prior to the effective date of the benefit reduction may also be prohibited, even with a popular vote, although this more of an open question. However, Management believes that under the governing law, retirement benefits of current employees for service time not yet performed may be prospectively reduced with a popular vote of citizens approving the reduction.

2-4 Could the task force look into the difference between a Defined Benefit Plan vs. a Defined Contribution Plan? The current pension fund is a Defined Benefit Plan. Is this the best way for the City to continue for new hires in the future?

Yes, the Task Force may look into the difference between these two types of plans. There are three articles on this topic included under Tab 12 of your binders. These articles, particularly the third one submitted as a white paper on the "Myths and Misperceptions of Defined Benefit and Defined Contribution Plans", provides a good starting point for the Task Force to study the differences between a Defined Pension Benefit vs. a Defined Contribution Plan and to assist the Task Force in framing their own answer to the second part of this question. We have also included an additional article in the Appendix as Attachment E.

2-5 Task Force should look into the average age of retirement for the City's police and firemen. For new hires, this early average retirement age may need to be extended.

The normal retirement age was changed for new hires as of June 1, 2006 as follows: See page 20 of the Actuarial report (Tab 4 in your binder) which states the following:

Eligibility for unreduced benefits upon meeting any of the following:

Employees hired before June 1, 2006:
- Age 50 and 20 Years of Service,
- 25 Years of Service, or
- Age 60

Employees hired on or after June 1, 2006:
- Age 55 and 25 Years of Service, or
- Age 60

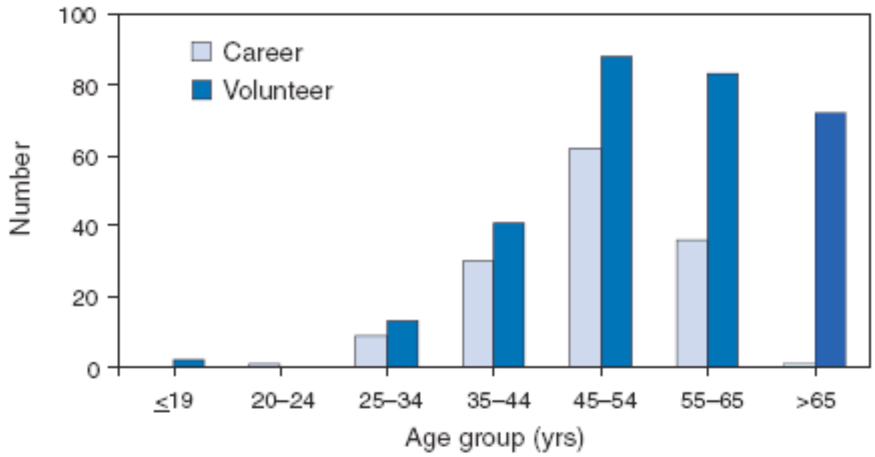
As of June 30, 2008, the average age for participants were as follows:

	Police	Fire
Active Participants	36.8	39.5
Average age of onset of disability retirement	41.2	44.9

Officers and fire personnel, though equipped with all the necessary equipment to help protect them, must be capable of strenuous physical activity to protect themselves as well as the public they serve. As officers age, they are naturally less capable of restraining violent offenders, jumping fences, and running long distances. Therefore, it is not in the officer's or the community's best interest to have people over the age of 60 serving as a police officer.

The following information shows number of fatalities in firefighters by age. The chances of death or serious disability increase significantly with the age and physical condition of a firefighter. Obviously the ability to perform extended physical exertion, as is typical in a fire fighting/rescue scenario, decreases with age. Extending the age of retirement would increase the numbers of fatalities and disabilities.

FIGURE 1. Number of fatalities caused by heart attacks* among career and volunteer firefighters, by age group — United States, 1994–2004



* For example, myocardial infarction or arrhythmia.

From study by the National Institute of Occupational Safety and Health cited by CDC and FEMA, U.S. Fire Administration
http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5516a3.htm

2-6 Evaluate the amount of working firemen and police in relation to the amount of retirees. ***EVELYN HONEA***

Participants As of June 30	Actives*		Retirees		Vested**			Retires as Percent of Actives	
	Police	Fire	Police	Fire	Police	Fire	Total	Police	Fire
2008	299	206	215	247	6	1	974	1.39	0.83
2007	310	204	201	248	5	1	969	1.54	0.82
2006	318	202	196	245	4	1	966	1.62	0.82
2005	338	210	193	241	4	1	987	1.75	0.87
2004	360	207	188	222	4	1	982	1.91	0.93
2003	338	203	182	225	4	1	953	1.86	0.90
2002	332	206	175	216	1	1	931	1.90	0.95
2001	306	203	165	212	1	1	888	1.85	0.96
2000	296	204	158	206	1	1	866	1.87	0.99
1999	290	201	152	197	1	1	842	1.91	1.02

*The actives include Tier II employees hired after June 1, 2006 - 37 police and 17 fire.

**Vested – employees who terminated after 5 or more years of service and elected to maintain their right to a benefit, but have not met the age requirement to draw the benefit.

2-7 The Pension Board needs the freedom to regulate the benefits as is prudent to accomplish the above challenge. If there is no provision in ERISA that allows for the Pension Board to do this necessary task in a government pension plan, then change is need in the city charter. The ability of the Pension Board to properly and prudently manage the fund should not be governed by, not hindered by a process that strips them of their power to do the plan justice. I would seek legal opinions in this matter with respect to ERISA. Is there an instance where ERISA would supersede the city charter in this case. If there is no such provision, I would suggest the city make an effort to change the charter so that those powers necessary to govern the plan with prudence would be placed under the auspices of the Pension Board.

Question 2-7. Does ERISA preempt the City Charter? Could the City Charter be changed to place the power to govern the pension plan in the pension board? For the reasons set out below, the answer to both of these questions is no.

Question 2-7(a), Does ERISA preempt the City Charter? The answer is no because ERISA does not apply. The Springfield pension plan is a governmental plan. Governmental plans are specifically exempted out from all provisions of ERISA control. A case involving Missouri schools affirmed this exemption. It is Missouri State Colleges & Universities Group Ins. Consortium v. Business Men's Assurance Co. of America, 980 F. Supp. 1333, 1334 (W.D.Mo. 1997)(collected cases discussing governmental plans). Also in support of the proposition that the Springfield Police and Fire retirement system is exempt from ERISA as a governmental plan, please see the following treatises:

> "A plan is a 'governmental plan' if it is established or maintained for its employees by the United States, a state or local government, or by any agency of instrumentality of either of the above. ….Parties cannot ignore the 'governmental plan' exception to ERISA by simply agreeing to be covered by ERISA because federal subject matter jurisdiction cannot be conferred by private agreement….
>
> "Governmental plans are exempt from complying with all of the provisions of ERISA." 29 USCA Section 1003(b)(1). *Employment Coordinator*, EMPC BENEFIT Section 2:33, Governmental Plans.

"Government plans are exempt because of their ability to tax and thereby avoid the pitfalls of underfunding." (AMJUR, PENSIONS, Section 60, Government Plans). *Therefore, ERISA would not pre-empt the City Charter because it does not apply to plans authorized by the Charter or by City ordinance.*

Question 2-7(b), could all the powers necessary to govern the plan in its entirety be placed in the Pension Board rather than the City Council? In other words, could the legislative power of the City be split between the Council and a pension board? The answer is no. The types of powers that would be necessary to allow the pension board to operate the plan independent of the Council would require a delegation of the power to appropriate, to tax, to create a debt and to set the compensation of employees. *These are all legislative and must be held by the elected legislative body of the City.*

Legislative power in Missouri cannot be delegated away from the elected legislative body to an officer or a board. State el rel. Priest v. Gunn, 326 S.W.2d 314 (Mo. Banc 1959)(Board of Police Commissioners of St. Louis denied writ of mandamus to force appropriation of additional sum to maintain expenses of police department). The legislative body may allow an administrative body to act after the legislature has set the limitations, rules and standards for the board's actions.

Springfield is a charter city. It may not prohibit what state law allows, nor allow what state law prohibits. Its City Council cannot delegate away legislative power nor may its citizens. Its citizens have retained some legislative power to themselves through initiative and referendum. All else must be exercised by the elected body. Legislative power must be wielded by elected representatives. (AMRJUR MUNCCORP, Section 134, Delegation of powers to member of committee). A City Council may not delegate legislative power to a board. The fixing of compensation, work conditions, and appropriation of money are legislative and may not be delegated. City of Springfield v. Clouse, 356 Mo. 1239, 1251, 206 S.W.2d 539, 545 (Mo. 1947)(overruled on issue of collective bargaining only in Independence-National Education Association, 223 S.W.3d 131 (Mo. Banc 2007). The only power that may be delegated away is the power to set a minimum compensation for an employee. See State ex rel. St. Louis Fire Fighters Ass'n Local No. 73, AFL-CIO v. Stemmler, 479 S.W.2d 456 (Mo. banc 1972)(discussion indicating voters could set minimum compensation in Charter, but cannot delegate ongoing ability to change benefits or compensation to one other than elected legislative body). The power to tax or create debt must be exercised by the legislative body of the city. See City of Raytown v. Kemp, 349 S.W.2d 363, 365 (Mo. banc 1961)(sewer bond issue).

Could the voters decided to create a pension board with legislative powers? The Missouri Supreme Court answered this question with a "no" in State ex rel. Field v. Smith, 329 Mo. 1019, 49 S.W.2d 74 (Mo. Banc, 1932), when it struck down an attempt by the Missouri General Assembly to give too much power to the Kansas City Board of Police Commissioners. The Court noted that the power to tax (which is legislative) is the same as the power to create debt (setting compensation, making decisions requiring appropriations). In effect, the state law had given the Board the power to create debt. This opinion was discussed in the case of Firemen's Retirement System v. City of St. Louis, -S.W.3d--, 2006 WL2403955 (Mo.App). ED 2006), but not overruled. The Court of Appeals attempted to distinguish the Smith case from the one before it by saying the actuary was the one that set the debt. This of course ignores the issue of the delegation to the actuary of the power to create a debt being a delegation of legislative authority to an individual. The City of St. Louis did not raise that defense. In any event, the legislative power given by the State to the City may not be delegated again through the Charter or ordinance to a board. State ex inf. Barrett ex rel. Callaghan v. Maitland, 296 Mo. 338, 246 S.W.267, 268-269 (Mo. 1922)(water commission invalid). See also, State ex rel. City of Excelsior Springs v. Smith, 336 Mo. 1104, 82 S.W.2d 37 (Mo banc 1935)(strongly suggesting any board attempting to exercise arguably legislative powers must be under the management and control of the council).

2-8A Is there a plan or provision in place for the Pension Board members to receive regular training and education specifically for trustees?

Yes. Section 105.666 of the Missouri Revised Statutes requires pension plans to establish an education program for all board members. Under Tab 14 in your binder, there is a Power Point presentation that is provided as training for all new pension board members within 90 days of their joining the Board as a Trustee. All board members are also given the opportunity to attend the annual Missouri Association of Public Employee Retirement Systems (MAPERS) conference, which offers training designed to meet the state statutory requirement as defined in Missouri State Statute 105.666:

> **Board member education program required, curriculum**
>
> 105.666. 1. Each plan shall, in conjunction with its staff and advisors, establish a board member education program, which shall be in effect on or after January 1, 2008. The curriculum shall include, at a minimum, education in the areas of duties and responsibilities of board members as trustees, ethics, governance process and procedures, pension plan design and administration of benefits, investments including but not limited to the fiduciary duties as defined under section 105.688, legal liability and risks associated with the administration of a plan, sunshine law requirements under chapter 610, RSMo, actuarial principles and methods related to plan administration, and the role of staff and consultants in plan administration. Board members appointed or elected on a board on or after January 1, 2008, shall complete a board member education program designated to orient new board members in the areas described in this section within ninety days of becoming a new board member. Board members who have served one or more years shall attend at least two continuing education programs each year in the areas described in this section.

Board members also attend relevant training sessions through their own professional associations, such as the Governmental Finance Officers Association (GFOA), the International City/County Management Association (ICMA), and the International Municipal Lawyers Association (IMLA).

2-8B Does the Pension Board of the City of Springfield belong to the International Foundation of Employee Benefit Plans?

No. The Springfield Police Officers' and Firefighters' Retirement System is a member of the Missouri Association of Public Employee Retirement Systems (MAPERS).

2-8C Does Segal Advisors provide additional education and training that is attended by the members of the Pension Board?

Yes. At least once a year, the financial advisor does provide a training session for the Board related to a relevant investment topic. The Pension Board members also receive regular reports and updates from the financial advisor. During these presentations by the financial advisor, the board members have opportunities to ask questions and seek additional information from the consultant.

2-8D Do the legal staff and administrators also attend this training to keep abreast of the constantly changing world of pension law and its interpretations?

Yes. All members of the Board, including legal and administrative staff, attend at least two training sessions during the calendar year. The non-voting members, including the City Council representative, also attend at least two training sessions annually. In addition, the Board members are aware of their responsibilities in this area and are required to report their training hours to the Board Secretary to ensure that each member is in compliance with the state law.

2-9 If the current pension is closed and the shareholders are to remain in the plan for 50+ years, do we really need to seek 100% funding within five to 10 years?

It is not critical to achieve 100% funding within five to 10 years. In the actuary's opinion, it *is* critical to take action that will serve to significantly improve the funded ratio going forward. The extraordinary investment market downturn of the last year has knocked 10-15 percentage points off the funded ratio in one fell swoop. This likely makes it less practical to achieve the funding targets being discussed because of the investment market losses that have occurred in such a relatively short timeframe.

The speed with which the target is reached is less the actuarial issue than adopting a realistic roadmap where success is eventually reaching a target that is relatively certain. The decision on the *timeframe* to achieve the target is more a budgeting or political consideration – is it more feasible to generate a much higher contribution income for a relatively short time (5-10 years) or to take the path of more modest contribution increases spread over a longer period of time? While certain targets may eventually be reached under various scenarios, an infusion of cash into the earliest years, would provide a quicker build-up of plan assets which, in turn, would allow for the generation of more investment earnings and thus, the potential to achieve a recommended target. Whichever path is taken, the actuary does believe it is important that execution of a plan begin as soon as possible.

2-10 Am I correct to assume that, because the police and firefighters accepted an increase pension benefits in lieu of pay increases, if the city reduces pension benefits the city will have to reimburse the police and firefighters for wages?

The answer is no. Initially, it should be noted that review of the past benefit increase ordinances indicates that police and fire employees also received salary increases simultaneously with or following plan benefit increases. However, it will be assumed for purposes of this response that this statement is true to some extent.

Compensation and benefits for City and other public sector employees are subject to collective bargaining between employee representatives and management. Recent case law has also held that the results of such negotiations cannot be unilaterally changed by the public employer during the agreement period without first engaging in collective bargaining over such changes. However, the City's budget is established annually, and employee compensation and benefits are subject to negotiation and renegotiation on an annual basis. Further, the final setting of the compensation and benefits for the City workforce, along with the other items approved in the City's budget, is ultimately a legislative function, and as such is subject to future amendment by City Council in its discretion. Finally, none of the prior meet and confer negotiations with police and fire or other employee groups ever stated or implied such an understanding or agreement. While annual negotiations in most years involved discussions or choices between compensation and benefits, and such discussions normally centered on the extent of any increases in such items, reductions or decreases in compensation or benefits have always been potential items for consideration when conditions warranted.

2-11 With 974 employees and retirees in Tier I and 61 in Tier II, how long will payment of benefits remain a financial liability based on life expectancy tables?

As of June 30, 2008, there are 8 employees under the age of 25 with only 1-4 years of service. If they work 25 years and retire at approximately age 50 and live to age 80, they would draw benefits for 30 years - approximately 25 years from now. That would mean we would be paying benefits 55 years from now. If a retiree has a much younger spouse, the spouse could conceivably be drawing a benefit 60-65 years from now. As of April 25, 2009, there were 54 employees remaining in Tier II – 17 in Fire and 37 in Police.

2-12 May the City create a defined contribution plan for all new hires and consider converting previous plans to same?

Yes, but only for benefits *not yet earned for current hires*, and for *all new hires*. The current plan could be converted to a defined contribution plan with a vote of the people for benefits not yet earned.

Springfield appears to have created the pension system under Section 86.583, RSMo, which was enacted just prior to the vote on Springfield's pension system in 1946. At the time the City was a second class city. The statute authorized a pension for either police or fire and did not require that a retirement be given to both employee groups or be operated as one system. Because Springfield is a charter city, state law cannot set a minimum retirement benefit for police and fire firefighter retirees. The Missouri constitution prohibits the State from setting the compensation of any employee of a charter city. (Art. VI, Section 22, Mo. Const. 1945 as amended.) Pension benefits are compensation. Sihnhold v. Missouri State Employees' Retirement System, 248 S.W.3d 596 (Mo. banc 2008). Therefore, state law may not prohibit a defined contribution plan for police and fire employees. The only exception is LAGERS which a city joins voluntarily. That defined benefit plan is not "set" by the state for purposes of this constitutional prohibition because of the voluntary nature.

Could the current plan be converted to a defined contribution plan? Yes with a vote of the people, Springfield could end its current pension plan (no new benefits earned) and not cover new hires under any plan. Since the plan could be ended, it may be changed. This is so because City employees may not assume that benefits not earned yet may not be changed. The Springfield City Charter provides for a change of benefits going forward **by a vote of the people**. See e.g. Fraternal Order of Police Lodge No. 2 v. City of St. Joseph, 8 S.W.3d 257, 264 (Mo.App.WD 1999), citing State ex rel. Phillip v. Public School Retirement System of City of St. Louis, 364 Mo. 395, 262 S.W.2d 569 (Mo banc 1953) and Atchison v. Retirement Bd of Police Retirement System of Kansas City, 343 S.W2d 25 (Mo. 1960). Because the charter has a protection for reduction of benefits, and a defined contribution plan may prove to be a reduction in benefit (no longer promise a certain amount in the future for work performed today), a vote would be required. It may not be said that a defined contribution will yield the same pension payment as a defined benefit plan. The plan could be changed to a defined contribution plan with a vote of the people for new and current employee's benefits going forward.

If after a thorough study, the Task Force decided to recommend a defined contribution plan for all new hires and for benefits going forward, the current system would then become a "closed" plan. A closed plan will result in different assumptions for the plan, much more conservative than those currently used as discussed above in Question 2-2B.

2-13 I suggest that the Pension Fund rescind the reimbursement of contributions made by the employee after they retire. This amendment to the plan was self-serving and voted in by insiders. The employees need to have some skin in the game. Anyone in their right mind knows that a Defined Benefit plan requires funding to provide the benefits. No market will support the distribution of benefits without adequate funding. If employee contributions are refunded, the taxpayers have to fund the entire program.

For benefits earned by current employees, the City has taken the position that it will not try to enact retroactive legislation to rescind employee contributions. On a going-forward basis, however, the City believes that such action could be taken by City Council. However, it should be noted that the attorneys for the Police and Fire associations strongly disagree that Council or a popular vote could make such changes.

2-14 Liquidate the Defined Benefit plan and redistribute the funded portion to a Defined Contribution plan that the city can afford to make contributions to!

The City cannot liquidate the current defined benefit plan and redistribute the funds among the retirees and current employees to create a defined contribution plan. It is the Law Department's cautioned advice that the Charter does not allow for earned benefits to be reduced, even with a vote of the people. We believe that federal law would come into play on vested property rights which would definitely impact the charter provision. This is generally the rule for municipalities that officers and employees who have earned benefits may not have those taken away without violating some provision making them ineligible to receive the benefit. See, 3 McQuillon Mun. Corps, , Section 12.164, *Procedure generally-Discretion of board*. In addition, trust law comes into play because the money is held in a trust fund pursuant to state law. Section

105.662, RSMo. The City would have to somehow "break the trust" which is doubtful that could happen given the earned status of benefits.

2-15 Would the pension board give a detailed report of all investment gains and losses? See Schedule C attached.

Please refer to the most recent report from Segal Advisor, "Analysis of Investment Performance through March 31, 2009" that was distributed at the May 13, 2009 Task Force meeting. Also, under Tab 6 in your binder, are additional financial reports, including a Statement of Plan Net Assets and summaries of performance for the investment portfolio. There is also a wealth of information at the following website, including detailed investment information for each asset class and financial reports for past years that provide an accounting for the investment gains and losses of the fund: http://www.springfieldmo.gov/egov/boards/pensiontask/home.jsp

2-16 What concessions will be made by the Policemen and Firemen which are adversely affecting the Pension Plan?

See the response to question 1-7. City Management does not speak for the police and fire associations. There are many factors that have impacted the pension fund and created the shortfall. While it is true that employee benefits have created a portion of the shortfall, all benefits provided to any City employee, including police officers and firefighters, must be reviewed and approved by City Council.

2-17 State law - % funded and when.

In 2007, the Missouri State Legislature enacted section 105.683 RSMo which stated that a city that has a plan below 60% of actuarial required funding and that has a descending funding ratio for five consecutive plan years and where the governing body fails to make 100% of its annual actuarial contribution for five consecutive years can have up to 25% of monies it is due from the State of Missouri withheld until the actuarial shortfall is paid.

State law also requires that any plan that is below 80% actuarial funding shall not pass any benefit increases until the fund is above 80%. These are the only State mandates.

2-18 Explore what a separate disability plan would cost.

Regular Disability Insurance:

We did not find one of our carriers that would write a regular disability policy for the police and firefighters by themselves. They are considered an excluded group for a standard long-term disability product. If they were encompassed with all of the City employees, and were less than 25% of the total enrollment, they could likely be covered; however, police and fire employees, as a percentage, are greater than 25% of our work force.

1,701.4 Total FTEs & equivalents (all funds)

625.5 Total Police & Fire employees= (36.7%)

Serious Disability Contract Product:

We did find another type of disability policy, called a Series Disability Contract, from Assurant, that can be offered. This is a disability income (DI) product, but a little different than the "norm". The City must be the policyholder for this product. We can define the eligibility to each active full-time firefighter eligible for the pension plan...or something along those lines to class this benefit.

This is different from a standard DI product. To qualify for these benefits, one of two requirements must be met:

- Continuous hospital confinement of 72 hours or more; or
- Being diagnosed with a terminal condition (12 months or less life expectancy).

Qualification for continued benefits after the first 6 months requires:

- The condition must result in a 75% whole person impairment rating (or extreme impairment for psychiatric conditions); or
- Being diagnosed with a terminal condition (12 months or less life expectancy).

Those meeting the above qualifications must also be unable to do one of the material duties of any gainful occupation for which they are qualified.

The rate is $1.00 per every $100 of benefit. Equated to payroll, it would be 0.80% of covered payroll ($75,000 is the maximum covered payroll per employee). Employees can cover up to 80% of their income to a $5,000 monthly maximum. The cost for the city to cover this benefit is estimated at $204,380 annually.

2-19 Could pay increases offset a decrease in pension benefits for future hires?

This question seems to ask if new hires could be paid a higher base salary in return for lesser retirement benefits. Yes, this is an option the Task Force may consider. However, the Task Force should consider the impact on the City's ability to recruit and retain police officers and firefighters.

The following is the perspectives from Chief Rowe.

If the benefit package were reduced, a significant increase in base salary of 20-25% would be necessary for competitive pay for police officers. We would still be at a disadvantage competing for qualified candidates with agencies offering competitive defined benefit pension plans. Attached is a graph comparing Springfield's starting annual salary for police officers to other jurisdictions with whom we compete for officers is included in the Appendix as Attachment F.

The following is the perspective from Chief Rowell.

There would have to be a significant enough pay increase that would offset the long-term loss of security and disability benefits. My thought would be that it would cost more to make that much of a significant difference from the costs of putting the new employees into the LAGERS system. LAGERS system costs would be in the 18-20% range which is actually a reduction over the current and past levels of contributions that the City has been paying into the Pension System over the last several years. I think you could move to LAGERS for a lot less than the salary it would take to offset the loss of security of the defined benefit.

2-20 What is your experience modifications for disability? Is Springfield disability claimants higher than average?

A consultant was hired in 1995 to study this issue and found the actual number of disability claims to exceed the actuarial assumption and felt the percent of retirements as disabilities was significant. The report recommended better pre-entry medical screenings and job reform as well as a work hardening program in order to reduce disability retirements. Since that time, the board has taken several steps to ensure disabilities are scrutinized even more intensely.

First, the Board recommended, and the City implemented, a work hardening program for duty disabilities and provides for mandatory, short-term light duty assignments. Second, the Board recommended the City establish permanent light duty positions in each department; however, this was not implemented. Third, pre-entry medical screenings are being given by the City; however, they are of limited value for the pension system since pre-existing conditions cannot factor into disability claims based upon plan provisions. Fourth, the Board modified the Independent Medical Examinations (IME's) reporting forms to make a determination on a) if the applicant is disabled from performing the job and b) is it a direct result of occupational duties. Fifth, the Board sends appropriate applicants for a functional capacity examination (FCE) in addition to the doctors. This evaluation is designed to determine applicant capabilities and to detect those that are not making full effort. Sixth, the Board sends some of those receiving disability benefits for reevaluation. Those that are able to return to duty are returned and any that do not take the evaluation, their benefits are stopped. Seventh, the board attempted to reduce pension benefits to those exceeding the income limitation; however, this languished in the judicial system for years until its final disposition in 2008. Since that time, the Board has moved forward to enforce.

Since 2006, several other changes have also been made. In 2006, disability benefits were changed for new hires. This included adding a disability rating component. Those with less than 25% rating would receive a reduced disability pension amount. In 2008, the Board worked with the City to ensure the job descriptions adequately reflected the requirements of the job as well as the frequency of each activity in order to allow those that can do their job, working. The Board also hired a nurse consultant to ensure applicants are sent to the most appropriate doctors to provide the best guidance to the Board. In addition, the form being sent to physicians now requires the physician to note any accommodations that could be made to allow the employee to continue to work. Lastly, the Board closely scrutinizes disability claims. If there is uncertainty, the claim is generally denied and the applicant can request a formal hearing before a hearing examiner. In most cases, the Board's decision has been reversed in favor the applicant.

It should be noted that many factors can impact disability rates, so care must be made when making comparisons. For example, staffing levels in the fire department can impact the number of injuries. Similarly, protective equipment can impact rates such as the provision of hearing protection. Lastly, and probably the greatest impact, is the plan design. Subtle differences can create significantly different disability rates.

2-21 Are union representatives comfortable with the composition of the Board of Trustees?

The Associations are developing a response, and when available, it will be distributed to the Task Force.

2-22 Should the City be required by ordinance to make the annual actuarial required contribution into the Pension Fund? Should there be both a minimum and a maximum annual contribution limit?

Currently, the City is not required to make the annual Actuary Recommended Contribution (ARC) into the pension fund. The City Code states the City "may" make the contribution; not "shall." The ARC is recalculated each year.

The City did not make the full contribution in FY05-FY08. During those four fiscal years, the City underfunded the pension fund by a total of $10.2 million (in today's dollars, including interest). The City recently settled a telecommunications lawsuit with AT&T Mobility that will result in $10.2 million being deposited into the pension fund. Thus, the City's required contribution will be whole once the settlement funds and monthly payments through June, 2009 are deposited into the pension fund. However, the pension fund remains significantly underfunded overall due to other factors.

Requiring the City to make a full ARC each year would "tie the City's hands" during a year when the City experiences a fiscal emergency (as determined by City Council and the City Manager). As the ARC grows each year a funding solution is not in place, a minimum and maximum annual contribution requirement (probably relative to the annual ARC) could be considered by the Task Force.

Recent state legislation requires any City in Missouri with an under-funded pension plan to make a full contribution (ARC) at least once every five years. If the City fails to do that, the State can withhold 25% of the City's revenues collected by the State (approximately $18 million per year). Springfield made a full contribution in FY09. The proposed FY10 budget includes a recommendation to, once again, make a full contribution to the pension fund.

2-23 Should the Pension System hire an executive director to manage the Pension process? If so, what would be the responsibilities of that position and what qualifications should an applicant for the position have?

Day-to-day management of the Pension Plan is handled by Finance Department staff, with oversight by the Pension Board of Trustees. As the Plan has grown and become more complex, the management requires more time and expertise. A full-time executive director would be beneficial. An executive director would need to have knowledge of the administration of government plans including benefit payments, investments governance and pension administration. This has not been pursued because of the additional cost to the Plan.

2-24 Should the make-up of the Pension Board be changed to exclude some or all categories of City employees (including police officers, firemen, city management, etc.)? If so, recommend an alternative Board composition.

It can be argued that <u>all</u> City employees currently serving on the Pension Board (representatives from the City Manager's Office, Director of Finance, Director of Human Resources, City Attorney, currently employed police officers and firefighters, and retired employees) have a potential conflict of interest to varying degrees. However, state law requires that at least one recipient of a pension benefit from both Police and Fire departments must be on the Board. The absence of City employees would, obviously create a necessity for an all-citizen Pension Board absent of any conflicts of interest. The Task Force may recommend an alternative Board composition.

Team Three

3-1 Go into Section 9 (Municipalities) bankruptcy and thereby attempt to restructure either the pension funds or to restructure the city's financial structure. This probably in bankruptcy would occur by selling city assets, or cancelling or changing city contracts, or both.

Chapter 9 Bankruptcy Proceedings are initially unlike other bankruptcy proceedings in that the standard a municipality must meet, in a general sense, is that it is unable to pay its debts as they come due or that it will, with some certainty, not be able to pay future debts. "Future" is, generally, viewed in the next several months up to a couple of years. It is not contemplated that a debt due in the distant future will allow a bankruptcy filing.

A Chapter 9 debtor remains in control of the city finances. There is no Trustee appointed. However, the other substantive aspects of bankruptcy apply such as an automatic stay, rejection of contracts, in some cases liquidation of assets, and court approval of the bankruptcy plan. Again, without knowing the specifics, this answer is only meant as a general response.

3-2 How much money and how soon will we need it in order to achieve 80% funding (the gold standard) and sustain it for 1 year? 2 years? 3 years?

Assuming the same level of assets and liabilities as of June 30, 2008, upon which all of our available actuarial studies are based (see Tab 11 in your binder), it would take approximately 15 years with a ¼-cent sales tax ($9.6 million per year) to reach 80% funding. This also assumes that the assumed rate of return is achieved on the investments of the assets over those 15 years. Once attained under these assumptions, the plan should be able to continue to sustain an 80% level of funding without a continuation of the ¼-cent tax.

In addition, it is important to note that the legislative authority for the sales tax requires a mandatory sunset at the end of 5 years.

To reach the funding levels in these scenarios, the tax would have to be renewed at the end of each 5-year period.

With a ½-cent sales tax ($19.2 million per year), the fund would reach an 80% funding level within 6 years based on the same assumptions. The results also seem to be the same for a "closed" or "open" plan.

If the actuarial assumed rate of return of 7.5% is <u>not</u> achieved and the fund has poor experience with investment returns, the plan would never reach 80% funding with a ¼-cent sales tax and with a ½-cent sales tax, the tax would have to remain in place for 13 years.

These projections are all prepared using the June 30, 2008 figures as a starting point. The investment losses suffered since that point would lengthen these required time frames discussed in this response.

3-2A What level of city funding must be maintained in the next few years as efforts are made to shore up the pension fund?

At a bare minimum, the City would need to continue to fund the actuarially recommended level of contribution to the plan going forward. For fiscal year 2010, that contribution is approximately $13 million.

3-2B How much funding do we need to come up with, in what period of time?

The Task Force would need to identify a funded ratio for the plan that they feel is adequate for the fund to be actuarially sound. Is this 60%, 80%, 90%, or 100%? An influx of cash over a 5-year period in an amount sufficient to achieve the desired level of funding ratio would be desirable to make the fund actuarially sound. How much funding is required to achieve this goal is dependent on identifying this target ratio.

3-3 What options are open and how much revenue will each generate?

A ¼- cent sales tax generates approximately $9.6 million annually, $19.2 million for a ½-cent sales tax, or $38.4 million for a 1-cent sales tax. We have been given legislative authority for the public safety sales tax up to 1% with a mandatory sunset of 5 years unless renewed by the voters at the end of the 5-year period. Any other tax would have to be granted legislative authority by the State before it could be considered as an option. The Police and Fire Pension Fund ordinance provides for the levy of a 1.5 mil property tax which would generate approximately $3.6 million on an annual basis. This provision is an “either/or” funding choice. The ordinance could be changed by City Council action to change the “or” to “and”. Staff continues to feel that a sales tax is a more fair funding mechanism based on the fact that approximately 50% of the City’s sales tax is paid by individuals who don’t live within Springfield, but avail themselves of Police and Fire services while they are here.

3-4 Is the commitment to the fireman and police pension fund governed by the laws of ERISA or by the City's Charter?

The plan is considered a “governmental plan” under ERISA, and as such is exempt from compliance with ERISA provisions. This is also true of other state and local governmental and public sector retirement plans. The plan, and the duties and obligations of its board of trustees, is governed by applicable non-ERISA federal law, state constitutional and statutory provisions governing public sector employee compensation and retirement plans, Springfield City Charter and City Code provisions, and relevant common law as set out in Missouri state and federal court decisions.

3-5 What would be the current funding level of the pension plan if:

- **The city made its required contributions in a timely manner for the last 10 years?**
- **The city did not make its required contributions, however the stock market remained strong?**
- **The city made its required contributions in a timely manner and the market remained strong?**

See the February 27, 2008 actuarial report by Milliman under Tab 11 of your binder. This study projects the outcome of the plan without a new injection of revenue other than the City's 28.88% contribution. The study also assumes that the investment portfolio would gain the 7.5% assumed rate of return indicating that the stock market would be strong. The City's contribution shortfall of approximately $10.2 million would have had some impact on the outcome of this study if it had been made on time in 2004 - 2007, but minimal. The result of the study shows that by 2030, the plan's assets would be zero and the actuarial accrued liability would be approximately $639 million.

3-6 How was the $10 million settlement applied to the pension? Was it applied to the city's past obligation or was it applied to future payments due? Is interest figured on what the city owes?

The settlement with AT&T will be deposited into the pension plan this month and will be sufficient to pay the City's Net Pension Obligation (NPO) that represents the contribution shortfall the City experienced in fiscal years 2004, 2005, 2006, and 2007 plus interest at 7.5%. The return on these funds will have generated greater earnings than if the City had made the contributions in a timely fashion due to the recent losses sustained in the market and in other years when earnings on the fund's investments did not match the actuarial rate assumption of 7.5%.

Going forward, the actuarially determined contribution requirements are expected to increase substantially. So the shortfalls between the 28.88% contribution rate and the actuarially determined contribution requirement will be increasing each year. The availability of any future telecom settlements to "plug the gap" is uncertain.

3-7 What is the City's flexibility to leverage its real property assets to help fund the pension plan?

The City issued bonds for the acquisition/renovation of most of the City's major assets such as the Media-Com Ice Park, the Busch Building, the parking garages, the Health Department Building, and fire stations. The bonds required the property to be mortgaged to protect the security of the bond holders. Therefore, these assets cannot be leveraged.

3-8 To what degree would a ½ cent sales tax with an 8-10 year sunset provision fund the pension plan?

Assuming the same level of assets and liabilities as of June 30, 2008, upon which all of our available actuarial studies (see Tab 11 in your binder) are based, a ½-cent sales tax ($19.2 million per year) for eight years would achieve approximately a 94% funding level. This also assumes that the assumed rate of return of 7.5% is achieved on the investments of the assets over those 8 years. State legislative authority for this tax provides for the tax to sunset at the end of five years; therefore, a renewal referendum would be necessary to achieve the full 8 years of funding. If the actuarial assumed rate of return of 7.5% is <u>not</u> achieved and the fund has poor experience with investment returns, a ½-cent tax would have to remain in place for approximately 16 years in order to achieve the same 94% funding level. Refer to the first actuarial study under Tab 11 of your binder.

Because these projections were based on the June 30, 2008 fiscal year-end numbers as a starting point, the investment losses suffered since that point in time would result in a funding level somewhat lower than the 94%

3-9 Determine City's contribution to any plan capacity for next three years. Set targets if they don't.

Management is not sure we understand the question/statement because we're unsure what "plan capacity" is referencing. There is no way to know the City's Actuary Recommended Contribution (ARC) level for the next three years at this time. The ARC is recalculated each year (typically in October, reflecting the immediately prior June 30) based upon updated information. However, it is fair to assume the ARC will increase substantially over the next three years if a solution is not found to the underfunding during that time. As an example, the City's ARC in FY09 (the current fiscal year) was around $12.5 million – this was the first time in four years that the City had made its full contribution and making the full contribution required $5.2 million in other budget reductions within the General Fund. The FY10 ARC was calculated in 2009 and is around $13 million. The ARC would be expected to increase each year until the shortfall is addressed.

3-10 What pension benefits are necessary to attract and retain qualified personnel in our police and fire departments? Does it have to be fixed benefit, or could it be a hybrid with a fixed component and a 401(k) type component? Should it just transition to LAGERs and what the financial impact of this be on the fund and the City?

The vast majority of retirement plans for police officers and firefighters are defined benefit plans. As for whether current employees could be transitioned to the statewide LAGERS retirement plan, the available options depend on when the employee was hired as follows:

- If the employee was hired prior to July 1, 2006, the employee is in the Tier I retirement plan and cannot be migrated to the LAGERS plan.
- If the employee has hired since July 1, 2006, the employee is in the Tier II retirement plan and can be given the option to migrate to the LAGERS plan. The report provided to the Task Force in Tab 10 of your binder addresses the study that compared the City's Tier II plan to the statewide LAGERS L-11 plan designed for public safety employees (that do not receive Social Security benefits). We believe a significant number of our __ Tier II employees would elect to migrate to the LAGERS L-11 plan if given a choice. However, this action would constitute effectively closing the City's self-funded retirement plan, which results in a significant increase in the City's annual contribution requirement if a significant funding source is not identified for the closed plan. See the response to question 2.2 for an explanation of why the City's contribution rate will increase sharply once the plan is closed..
- Future hires can be placed into any type of reasonable retirement plan.

The following are the comments from Chief Rowe and Chief Rowell regarding the retirement benefits they believe are necessary to attract and retain qualified personnel in our police and fire departments:

Recruitment and retention of police officers would require a competitive starting salary and competitive defined benefit retirement package.

All fire departments for cities on the current 11 city survey that the City of Springfield uses as a comparison for salary and benefits have defined contribution plans. Our particular plan ranks us in the middle for comparable benefits.

Six area departments have defined benefit programs while two have defined contribution programs. The two departments that offer defined contribution plans have lost significant numbers of employees to departments that offer defined benefit programs as well as comparable pay. These two departments have not gained any employees from the departments offering defined benefit programs and comparable salary.

Employees lost to DB plan Fire Departments in last 3 years:

- Logan Rogersville-8 out of 22 paid staff
- Battlefield- 7 out of 32 paid staff

"Springfield's Pension issue has helped us on retention by giving us time to begin catching up to them on salary."

Battlefield Fire Chief Jerry Sparkman

I do not feel that Springfield would be competitive in attracting quality applicants without a defined benefit (fixed) program. The effect is that your experience levels would drop significantly as people get trained and migrate to communities offering more security. Surrounding communities offer both defined contribution and defined benefit programs. The defined contribution departments lose personnel to the cities with the defined benefit programs; however, none of the defined benefit departments lose to the defined contribution departments. Both however, lose to Springfield. That is due to the slightly better pay and benefits and professionalism that Springfield offers.

Currently we have a defined benefit (fixed) plan and a 457 plan which is optional, however 80% of employees participate in it. A hybrid system with a fixed component that is lower than those cities surrounding us or lower than the survey cities would still tend to lose personnel to cities with higher fixed benefit programs.

Defined benefit systems also have a disability component that a 401(k) plan does not.

Separate disability insurance plans for police and fire fighters have not proven affordable when compared to a comparable benefit within a defined benefit program

Given a comparable salary and the fixed benefit component of a defined benefit program, a disability benefit is the second most significant competitive determiner over a defined contribution system.

With the competitive advantage that a defined benefit system has when compared to a defined contribution system, transitioning into LAGERS for new hires maintains Springfield's competitive recruiting advantage at a reasonable cost. LAGERS offers a fixed benefit, and a disability component. These are the two most significant competitive determiners given competitive salaries for fire.

3-11 What sources of income other than sales tax could be used to replenish the fund? For example, hotel/motel tax, increased employee contributions, city contributions, or a pension fund assessment?

Pursuant to City Code, other than the city contribution from sales tax placed in the general revenue fund, (code §2-457) the Pension Fund can be funded by three main sources:

1) Employee contribution: See City Code §2-455. Amount of employee contributions; deduction from salary. - which provides for a graded contribution from employees, depending upon their start date; (See also City Code §2-456. Return of participant contributions upon leaving service or death.)

    a. Code §2-455(d) – also provides for an 'Additional Funding Contribution "AFC" which provided for additional graded employee contributions based upon start date. This Code section was revised by City Council on 5/15/2006 to provide for the mandatory AFC by Ord. No.5546, §2.

2) Investment revenue*:* See City Code §2-458. Investment of assets of retirement fund. – which provides that the board may invest and reinvest the moneys of the system whether acquired by sale, purchase, assignment, transfer or disposition of any securities and the proceeds of any securities of the fund.

3) Grants and gifts*:* See City Code §2-452. Assets of retirement fund; acceptance of gifts and grants. – which allows the fund, through its' board, to accept by gift, grant, devise or bequest any money, personal property, or real estate or interest therein or any right of property, and the funds shall be applied to the purpose for which the retirement fund was established.

A special tax, such as a hotel/motel tax or a public transportation tax, is a tax authorized first by state statute for a specific purpose, and then by the vote of the people. As such, the funds can be used only in the manner set forth in the state statute, and then pursuant to the specific language on the ballot that was passed by the people. The hotel/motel tax "shall be used exclusively to promote tourism, conventions and other related activities in the city…".

3-12 Can the city make up the contributions that it has missed and what will the impact be on city services?

The City has received the settlement funds from AT&T this month. These funds will make up the contributions with interest that the City did not contribute in fiscal years 2004, 2005, 2006, and 2007. These are the only years that the contribution was not fully funded. Since these contributions are being made from one-time settlement funds from AT&T, there will not be a direct impact on city services in order to make this contribution. If the City did not have to use the funds to make-up the net pension obligation (NPO), the funds could be used to assist with ageing infrastructure and other pressing needs that face the City.

3-13 Describe Springfield ten and twenty years from now if a new funding source for the unfunded liability of the Pension Fund is not found. What services will Springfield be able to provide its citizens and how will it compete for business and industry if 25% or more of revenues are going into the Pension Fund?

While there is no way to know what Springfield would be like in ten to twenty years from now if this unfunded liability is not resolved, I believe it is fair to assume the annual Actuary Recommended Contribution (ARC), which is recalculated annually based on fiscal year-end data, will continue to increase significantly. Assuming the City makes its full contribution each year, and assuming sales tax revenues and other revenue sources remain relatively stable or increase slightly, the increasing amount of the pension contribution will continue to erode City services and the City's quality of life. In the proposed FY10 budget, the portion of the $13 million pension contribution that is attributable to the General Fund constitutes 16.75**%** of the General Fund's total $71.3 budget.

3-14 What future incomes does the City anticipate via sale of City-owned assets and future Cell Phone settlements?

City staff is currently reviewing each of the City-owned properties to determine which can be sold, with the resulting net proceeds being deposited into the pension fund. Approximately 900 properties are being reviewed. The process includes researching titles, verifying the source of funds used to purchase each property, evaluating the need to retain the property, etc. Due to regulations involving the funding source, sale proceeds can be placed into the pension fund only from properties purchased with General Fund revenues. Properties purchased with sewer bonds, storm water bonds, capital improvement funds, and parks tax funds cannot be sold and the proceeds placed into the pension fund. A minimal number of the City's properties were purchased using General Fund revenues. Thus, there will be a relatively small number of properties eligible to be sold with proceeds deposited into the pension fund. We anticipate completing this analysis and research in approximately two months. Once this process is completed, eligible properties will be placed on the market for sale.

3-15 Benefits for future hires and possibility of changing Charter.

The benefits for future hires may be established by Council action if changes to the benefits established in June, 2006, need to be changed. Otherwise, new hires will be placed in the current system under the benefits established in 2006. Changing benefits for the future service of current employees would require a citizen vote.

3-16 Look at all revenue sources of City and all expenses. Where can revenue increase in future to cover what we have as fixed expenses and what we want.

City staff and City Council annually analyze all revenue sources and all expenses during the budget development process. Additionally, revenues and expenses are monitored throughout the fiscal year to ensure the City balances the budget annually.

I'm not sure what the second portion of the question is asking. Revenues can be increased by (a) increasing the sales tax base (increasing sales per person; increasing the number of individuals purchasing items in Springfield), (b) increasing gross receipts taxes and PILOTS, (c) increasing income from fees and permits. We must keep in mind that a population increase (and the resulting revenue increase from additional sales taxes) would be off-set by the additional costs to provide City services to these additional residents. Additionally, Missouri state law limits the amount of a fee to the cost of providing the service.

3-17 Is there an acceptable Sales Tax % the public will accept that will be large enough to retire the shortfall in a reasonable period of time

Determining whether a sales tax is warranted to address the pension fund shortfall and, if so, what percentage tax the public will accept, is part of the charge of this Task Force.

3-18 Can we muster the resources to educate enough of the public to recognize the severity of the problem and the efficacy of our solution?

Determining how to educate the public to recognize the severity of the problem and efficacy of the Task Force's recommended solution(s) is part of the charge of this Task Force.

3-19 Have other funding mechanisms such as a progressive city income tax been considered?

There is no state statutory provision in place that would allow for an earning's tax to be assessed by the City of Springfield.

Before a progressive city income tax can be assessed in Springfield, the state legislature would have to pass a new statute providing for our charter city to assess an earning's tax; and then the people would have to pass a ballot, agreeing to an earnings tax assessed on all persons employed within the City of Springfield.

3-20 History and procedure of other Cities that have filed Chapter 9 bankruptcy in the past.

The experience of other larger cities is limited. Orange County, California was the first entity to file for Chapter 9 in the mid-1990's. That case involved protracted litigation over the ability to avoid or restructure collective bargaining agreements. In the end, the bulk of these agreements were upheld in favor of the unions.

Bridgeport, Connecticut and Vallejo, California were the most recent cities to file. Both were ultimately dismissed from court because they could not show that they were unable to pay debts as they became due. The courts in both cases were very thorough in their review of the petitions compared to budget actions taken by the respective City Councils.

The only common result in all the municipal bankruptcies was that the filing acted as a default under the cities' various bond covenants and the resulting bond ratings were reduced to junk bond status.

3-21 Information on who governs plans City Charter or ERISA. Copy of City Charter if so.

City Charter governs the plan. Copies can be provided if requested.

3-22 Status and projected settlement of any future cell phone lawsuits.

The settlement of any telecoms lawsuits are under court-protected order and we are not allowed to discuss.

3-23 Procedure and options to leverage assets of City.

The City staff would need to know what assets and what the thought for the plan would be. Many assets are pledged or restricted by deed as to how they may be used. The procedure would then be to identify the asset that is sought to be leveraged. Staff would then be able to determine if special requirements needed to be met to do so. For instance, the leveraging of CU property may require an amendment to the charter (pledge) or a vote of the people (sell). Whether or not the leveraging would fit under the ceiling for City debt would have to be determined. Once a decision to pledge or leverage property was made, the Planning and Zoning Commission would need to be consulted because it is the body that must first review disposal of property. Also, the Public Building Corporation may need to become involved because it holds title to a number of properties that are already secured by bonds. City Council would then need to pass an ordinance regarding what the plan for leveraging is. If it involves bonds, there may need to be an election called. Once the election is held, Council would canvass the election results and then act on same.

3-24 Copies of City Charter Sections as follows: 2.16 (1), (2), (5), (6), (8), (17), (20), (22), (23), (25), (26), (32), (37), (39). 5.15, 5.19, 5.20 last paragraph, 5.21, 5.25, 6.8, 6.10, 10.2, 10.5, 10.6, 14.2, 2.12, 14.7, 15.4, 15.7, 15.8, 15.9 (5th & 6th sentences), 15.10 (4th & 5th sentences), 15.11, 15.14, 15.15, 16.1, 16.2 (1), 16.6, 16.7, 16.8, 16.11, 16.12, 16.13, 16.16, 16.17, 18.1, 18.2, 18.3, 19.26

Twenty-six Charter sections, or portions thereof, were listed with the inquiry as to how any of them may have been construed in light of the ability to raise funds, address pension issues, or dispose of City Utilities. Each section was checked against the legal opinions database. The only closely relevant opinions are 581, 2644, 4255 and 4926. As for the particular charter sections relevant to sale of CU, that would be 16.17. The Charter section, relevant to the disposition of yearly income is 16.16. In addition, although not listed in 3-24, 16.15 should be reviewed dealing with payments to the City and adjustments thereto. (Pilot payments). All opinions are subject to the attorney/client privilege.

3-25 List of all revenue sources available for the City. This should include what is currently used and what is available but not used. Also any revenue sources other Cities use that we can't use. For any revenue sources we don't currently use, have any projections of revenue been done.

The City's revenue sources are as follows:

<u>1% General Sales Tax</u>
Estimated sales tax revenue is based on actual receipts through March 2009 and anticipated economic activity for FY 2010. For 2010, the 1% general sales tax is projected to generate $38.5 million. This is a $3.1 million or 7.5% decrease compared to the FY 2009 budget. Sales taxes are identified by designation, for example, Parks, 911. Parks (3/8%), Law Enforcement (1/4%) and 911 (1/8%) are county-wide sales taxes. The amount reflected in this schedule is the City's share of these county wide taxes.

<u>City Dedicated Sales Taxes</u>

1/4 cent Capital Improvements	Expires 9/30/2010
1/8 cent Transportation	Expires 3/31/2013

<u>Property Tax</u>
The estimated property tax revenue for FY 2010 is based on the 2009 property tax levy of .6072. No change is anticipated in total assessed value in the City. The final tax levy will be set by City Council in August after the final assessed value is determined and the State Auditor has certified the City's levies. The estimated individual tax levies are:

Parks	.1826
Health	.1245
Art Museum	.0382
Capital Projects	.2619

Gross Receipts Taxes

Gross receipts taxes are received from cable providers and providers of telephone service including wireless providers. Cable television revenues are split between the general fund (60%) and Public Information Special Revenue fund (40%). Revenue from gross receipts is estimated to increase $2.3 million as a result of increased payments and the inclusion of tax revenue that was paid under protest in prior years.

Licenses and Fines & Charges and Fees

This revenue category includes occupational licenses, permit and fee revenue generated by Building Development Services and Planning. Court revenue from Municipal Court is also included. The cost of permits is reviewed annually and adjusted if costs have changed. Charges and fees are primary sources of revenue for enterprise funds and Parks. Parks fees are set annually by the Park Board.

Intergovernmental

This revenue category accounts for all revenue received from another governmental entity. This is generally federal grant revenue and grants received from the State of Missouri. Reimbursement for cooperative programs with Greene County is also reflected here.

Interest Income

All City funds are pooled for investment purposes. Interest is allocated to each fund based on the cash balances. The City invests primarily in U.S. Treasuries and Agencies.

Special Revenue Funds – Revenue sources that are restricted for a specific use by law or administrative order

- ✓ Law Enforcement sales tax
- ✓ Parks sales tax
- ✓ 911 sales tax
- ✓ Transportation sales tax
- ✓ Hotel/Motel tax
- ✓ Art Museum
- ✓ Red Light Cameras
- ✓ Telecable
- ✓ Car Park Operations
- ✓ Police & Fire Special Revenue

Grant Funds- Receipt and expenditure of funds received from various federal, state and local agencies.

- ✓ Public Health Grants
- ✓ Women Infants and Children
- ✓ Planning Transportation
- ✓ HOME
- ✓ CDBG
- ✓ HUD
- ✓ Housing Shelter
- ✓ Residential Redevelopment

- ✓ Rental Rehab
- ✓ Small Business Development
- ✓ Workforce Development

The City Manager is required to provide City Council with a proposed budget by May 1 of each year. That budget must be a balanced budget. However, there are no revenues that are "available, but not used." The City will not have a significant, if any, carryover at the end of the current fiscal year. In the proposed FY10 budget, the amount of contingency for unanticipated needs is only $100,000 within a $70 million General Fund revenue budget, or 0.0014.

Springfield is authorized, subject to voter approval to increase sales up to 1% for public safety. The authorized uses include compensation, pension programs and health care for public safety employees. City staff is not aware of any other allowable but unused sources of revenue. The City is also authorized to levy a 1.5 mil tax for the funding of the Plan rather than funding the Plan on an actuarial basis. This would generate approximately $3.7 million.

3-26 Has the $10 million cell phone settlement been received and was it applied to past or future obligations?

Most of $10.2 million settlement from AT&T Mobility has been received and has been deposited into the pension fund. The Council action approving the settlement allowed for AT&T's monthly payments through June, 2009, to be included in the $10.2 million total. These monthly payments through June will be paid into the pension fund. For FY10 (beginning July 1, 2009), I am recommending that these additional revenues (and other unanticipated revenues) be used to fill ten police officer vacancies and five firefighter vacancies. We have deposited $9,949,000 into the Pension Fund towards this obligation.

3-27 Proposed 2009-2010 budget (various)

An overview of the proposed FY10 (July 1, 2009 – June 30, 2010) budget is being provided to the Task Force during the May 20th meeting. We will be glad to respond to any follow-up questions that result from that review and discussion.

3-28 List of excess assets of the City that could be sold. If available, estimated proceeds, procedure and timing of sales.

We have a Land Inventory Committee representing several City Departments who are meeting on a regular basis to classify the City's property in order for us to determine what can be sold and what must be retained. The group has now looked at each property to determine its purposes, why we own the property, and whether or not the property should be retained going forward. We are now in the process of updating the database with this information and from this data, we will generate a list of properties for our departments to do a final review and approval of the classifications assigned. During this process, we will be seeking some direction related to the philosophy to be used for disposal of the properties. We also must determine how each property was acquired in order to return any sales proceeds back to the proper fund. This process is expected to be completed by mid-summer, at which time, we will share with City

Council a proposal for disposal of City property. Most of the properties that we have reviewed as potentially for sale are remnants, small strips of land, and pieces of property that will be difficult to develop due to size and access. In addition, few of the properties will return funds to the General Fund. This project is a high priority for staff and, as soon as we have the information available, it will be presented to City Council.

Questions Raised from 5-6-09 Presentation

1. How do Pension Obligation Bonds work?

An excellent article has been provided to the Task Force under Tab 12 in your binders that provides a complete description of how pension obligation bonds (POB) work and provides some history and background, plus information on the principal risks to the issuer of a POB.

2. Cost for a disability policy for police officers or firefighters?

See response to Question 2-18.

3. What has been done "wrong" in the past to create underfunding?

Many factors contributed to the underfunding of the pension fund. It would be easier to comprehend if a single factor had caused the existing shortfall.

- As mentioned previously, the City did not make its full Actuary Recommended Contribution (ARC) for four fiscal years (FY05-08) – a $10.2 million shortfall in today's dollars, including interest. However, as also mentioned previously, the proceeds from the telecommunications settlement with AT&T Mobility are allowing the City to make up for that shortfall.

- Actuarial assumptions changed to match actual experience. These assumptions are adjusted every five years. During the most recent study in 2004, adjustments were made to reflect investment experience, change in interest rate assumption, salary scale, active employee data, average salary at retirement, and changes in assumptions for payroll increases. This "experience" study will be conducted again after the close of the current fiscal year based on actual data for the past five years.

- Tier I pension plan benefits were added in lieu of larger raises over a relatively short timeframe under an assumption of higher (1990s) investment returns.

- Market returns for the pension fund have been less than expected since 2000. In part, this is due to the relatively conservative investment portfolio and poor economic times (e.g., 9/11's impact on market, the bursting of the technology bubble, and the most recent market downturn). However, the current economic conditions are not responsible for the majority of the shortfall. In July 1, 2009, prior to the recent market crash, the pension fund was $167 million underfunded.

4. Grievance procedure for employees – provide a copy.

The grievance procedures are contained in Chapter 13 of the City's Merit Rules and are provided in the appendix as Attachment G.

5. Why should the Fire Department offer EMT services?

Response provide by the Fire Department:

The Springfield Fire Department, in 1995, was the first fire department through legislation in the State of Missouri allowed to carry semi-automated external defibrillators (SAED's), thus establishing the standard. With the addition of the SAED to each of our fire department vehicles, it allowed us to vastly improve patient care. We now had a new tool which allows us to better serve and protect our customers, the citizens of Springfield. The American Heart Assoc. developed the chain of survival. The links of the chain are as follows: early recognition of a heart attack, call fast (911), early defibrillation, Advance Life Support and transport. We were lacking the defib link of this chain. The national average for a life save in a pre-hospital setting is only 3 to 5%. We have been able to report a save rate far above the national average of 24 to 26%. The reason behind this incredible save rate is our response time and the training of our staff members. During a cardiac related event, for every one minute you are in cardiac arrest, you lose a 7 to 10% chance of a favorable outcome. When we can be on scene in several of our response areas in less than 5 minutes, chances of a life save have greatly increased.

Both of the ambulance services each will run approximately 900 to 1000 calls a month for service in the City of Springfield. This large number of calls can and does increase the response times of both ambulance services. The advantage we have is the placement of our twelve fire stations throughout the city. Staffed with EMT's and Paramedics, our crews can supply care to the citizens in a quick and efficient manner while stabilizing the patient until the ambulance arrives.

We at the fire department also understand the need to be cost effective and give the best possible care to those that need it most. This is why we have developed a set of call types (11 to be exact) that will automatically trigger a fire department EMS response. The 11 call types are those that are immediate life threatening situations. We have accomplished two things since switching to the new call types: a faster response time, which increases customer care, and a decrease in the amount of non-life threatening calls. This is a decrease of over 100 calls a month, which has saved on fuel costs and wear and tear on the vehicles.

In conclusion, you have to ask yourself, do you want the best chance of survival for your children, spouse, and parents? The citizens of Springfield live in a city that truly cares about their well being, **your** fire department has a motto, "We're There, We Care" and we are true to this motto.