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Statement of Position

Maintaining a General Fund after Joining the Statewide Plan

The Statewide Volunteer Firefighter Retirement Plan (Plan), created by the Legislature, is a voluntary plan administered by the Public Employees Retirement Association (PERA). When a volunteer fire relief association joins the Plan, PERA takes over the administration of the pension fund. The Minnesota State Board of Investment (SBI) invests the assets of the Plan.

Fire relief associations have long been able to invest their assets through the SBI, while maintaining control over and responsibility for the payout of service pensions and benefits. Joining the Plan administered by PERA is different. Under the Plan, a volunteer fire relief association's entire special fund is transferred to the SBI *and* the fire relief association no longer pays service pensions or benefits.

A volunteer fire relief association that joins the Plan may choose to maintain its general fund and to continue operating as a nonprofit corporation. However, these fire relief associations must make changes to the structure of their board of trustees and to their governing documents to remain in compliance with Minnesota law.

Board of Trustees Structure

Once a volunteer fire relief association joins the Plan, the structure of the board of trustees from the fire relief association that continues to operate as a nonprofit corporation must change. The boards of trustees for these fire relief associations must be comprised of five trustees.¹ One trustee must be the fire chief, and four trustees must be elected by and from the fire relief association membership.

Articles of Incorporation and Bylaws

A volunteer fire relief association electing to maintain its general fund after joining the Plan must make changes to its articles of incorporation and bylaws. Changes to these documents must reflect that the fire relief association does not pay service pensions or benefits and no longer controls any public funds.

¹ See Minn. Stat. § 353G.06, subd. 2(1).

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This Statement of Position is not legal advice and is subject to revision.

Minnesota law is clear that a volunteer fire relief association which joins the Plan is not authorized to receive the proceeds of any state aid or any municipal funds, and cannot pay service pensions or benefits from its general fund that was not authorized as a general fund disbursement under the articles of incorporation or bylaws of the fire relief association in effect before the fire relief association joined the Plan.² By filing new articles of incorporation and adopting new bylaws, the fire relief association is acknowledging that it no longer administers a pension fund. Any references to a special fund or to the payment of pensions or benefits from public funds should be removed from the governing documents.

Other changes that a volunteer fire relief association should make to its articles of incorporation and bylaws include clarifying that the general fund continues to be governed by Minnesota Statutes, section 424A.06 (the section of State law that pertains to volunteer fire relief association general funds). The new articles of incorporation must be filed with the Minnesota Office of the Secretary of State. The new bylaws should be kept on file with the volunteer fire relief association.

A fire relief association that elects to maintain its general fund will follow the Minnesota Nonprofit Corporation Act to make changes to its articles of incorporation and bylaws in the future.³

The volunteer fire relief association's name, however, need not change. While the State law creating the Plan makes clear that volunteer fire relief associations which join the Plan no longer pay service pensions or benefits, these nonprofit corporations are still called "relief associations" in the statute, which may contribute to confusion concerning the nature of the new nonprofit corporations.

Reporting Requirements

When a volunteer relief association joins the Plan, the fire relief association no longer falls within the Office of the State Auditor's area of authority because the fire relief association's general fund does not contain public funds.

Fire relief associations which join the Plan and continue to operate as nonprofit corporations must complete an annual renewal with the Minnesota Office of the Secretary of State to keep the fire relief association's status as a Minnesota nonprofit corporation active.

Nonprofit corporations, including fire relief associations, which perform fundraising activities, may have reporting requirements with the Minnesota Attorney General's Office. Fire relief associations should review the information found under the "charities"

² See Minn. Stat. § 353G.06, subd. 2(3) and (4).

³ See Minn. Stat. §§ 317A.131 to .141 (how to amend the articles of incorporation) and § 317A.181 (how to amend the bylaws).

tab on the Minnesota Attorney General's (AG) website to determine whether they are required to file a report. Fire relief associations should contact the AG's Office with any questions regarding reporting requirements related to fundraising.

Fire relief associations that want to continue to operate a charitable gambling fund in addition to their general fund should contact the Minnesota Gambling Control Board.

Volunteer fire relief associations may also have federal reporting requirements for their general fund with the Internal Revenue Service (IRS). Fire relief associations should contact the IRS with any questions about their reporting requirements or about how joining the Plan and continuing to operate as a nonprofit corporation could affect their tax-exempt status.

It is important for the board of trustees of a volunteer fire relief association that joins the Plan and chooses to maintain its general fund to obtain guidance from an attorney who has experience working with nonprofit corporations.