



City of Austin Employees' Retirement System

**MINUTES**  
**CITY OF AUSTIN EMPLOYEES' RETIREMENT SYSTEM**  
**SPECIAL CALLED BOARD MEETING**  
**Tuesday, August 28, 2007 – 2:00 p.m.**  
**418 E. Highland Mall Blvd., Austin, Texas 78752**

**Board Members Present**

Janet Bartles  
Eyna Canales-Zarate  
Reagan David  
Betty Dunkerley  
Ed Golden  
Elizabeth S. Gonzales  
Mark Monteith  
Cathy Rodgers  
Anthony B. Ross, Sr.

**Absent**

Frances E. Benoit  
Leslie Browder

**Guests and Staff Present**

Stephen C. Edmonds, Executive Director  
Donna Boykin, Finance Manager  
Rhonda Helm, Operations Manager  
Barney Knight, General Counsel  
Peter Collins, Active Member  
Tonia Lucio, Attorney for Mr. Collins  
George Greene, Active Member  
David Smith, City Attorney  
Brenda Monteith

The meeting was called to order at 2:00 p.m. by Board Chair, M. Monteith.

1. Consideration of Request for Postponement of Appeal Hearing – Active Member Peter Collins

Tonia Lucio, Attorney for Peter Collins, confirmed that the request to postpone the hearing was withdrawn.

2. Continuation of Appeal Hearing – Active Member Peter Collins

*Note: C. Rodgers previously recused herself from this agenda item.*

Active Member Peter Collins' appeal was originally heard at the April 24, 2007 Board Meeting and was discussed at length at the June 8, 2007 Special Called Board meeting. M. Monteith advised that the next step in the appeals process is #7, the Board asks questions it may have of the Member, General Counsel, System Staff, Witnesses or the Executive Director.

E. Canales-Zarate made a motion to uphold the Executive Director's decision. J. Bartles seconded the motion. Ms. Canales-Zarate asked the Executive Director to explain why he took the action he took.

S. Edmonds advised that the law requires that errors be corrected and that it is his fiduciary responsibility to follow the law. As such, Mr. Collins' date of membership must be corrected and any incorrect estimates must be disregarded.

B. Dunkerley requested that the Board consider the issues from all sides. She advised that the City is working with Mr. Collins to pay their share, Mr. Collins is willing to pay his share, and it would only be fair for the System pay its share. She requested D. Smith, the City's Attorney, to confirm that the City of Austin is in negotiations concerning its share.

S. Edmonds advised that the law allows the City of Austin to purchase service time for employees. The Plan document requires that the System correct errors.

D. Smith, City of Austin Attorney, explained that he has been asked by the City Manager and Mayor Pro Tem B. Dunkerley to look at the issues and errors and analyze the law concerning the City of Austin's legal obligation as well as the equity of the situation. He stated that he could not advise of his discussions with the City due to his attorney/client privilege. He did state that the City was in negotiation to see what it could do about its portion.

The Board discussed that the action taken by the City of Austin is independent of the System's responsibility. The Board has a fiduciary responsibility to correct errors and the Executive Director made a decision to correct the error concerning Mr. Collins as soon as he became aware of it. The information the System provided to Mr. Collins was provided to the System from the City of Austin; this information was not misrepresented. The Board further discussed the law of unintended consequences. The Board's responsibility is to all Plan participants not to a specific individual.

B. Dunkerley stated that it is a matter of legal versus what is equitable. Staff should have known that the information was wrong; Mr. Collins made life changing decisions based on the information provided. She also advised that she researched and could not identify another employee in a similar situation moving from one retirement system to another. She advised that she will vote against supporting the Executive Director's decision, not because it is not legal, but because it is not equitable.

After a lengthy discussion, B. Dunkerley made a substitute motion to deny the Executive Director's decision and approve action that would provide that the System provide at least one-third of the cost based on the December 1998 cost. E.S. Gonzales seconded the motion.

D. Smith, City Attorney, was asked again about the City's decision. He advised that he could not provide that information. A vote was taken: B. Dunkerley and E.S. Gonzales voted in favor of the motion. J. Bartles, E. Canales-Zarate, R. David, E. Golden, M. Monteith, and A.B. Ross, Sr. voted against the motion. Motion failed.

The initial motion was restated: E. Canales-Zarate made a motion to uphold the Executive Director's decision. J. Bartles seconded the motion. A vote was taken: J. Bartles, E. Canales-Zarate, R. David, E. Golden, M. Monteith, and A.B. Ross, Sr. voted for the motion. B. Dunkerley and E.S. Gonzales voted against the motion. The motion passed.

The question was raised if the issue could be reconsidered. B. Knight advised that if a Board Member who voted on the affirmative side would like the issue reconsidered, they can request it be put on a future Board meeting agenda.

3. Convene into Executive Session Pursuant to Texas Government Code 551.074 to Consult with and Advise the Board of Trustees on the Evaluation and Performance of a Specific Employee
4. Reconvene into Public Session and Take Action as Appropriate Regarding the Evaluation and Performance of a Specific Employee

The Board convened into Executive Session at 2:52 p.m. and reconvened at 3:22 p.m. No Board action was required.

Meeting was adjourned at 3:23 p.m.

Mark Monteith  
Mark Monteith, Board Chair

9-25-07  
Date

Stephen C. Edmonds  
Stephen C. Edmonds, Executive Director

9/25/07  
Date