



Judicial Watch

Because no one is above the law!

VIA FACSIMILE (602) 542-4085
AND U.S. MAIL

August 27, 2009

Attorney General Terry Goddard
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007

Re: Illegal Payment of Pension Benefits to City of Phoenix Chief of Police Jack F. Harris

Dear Attorney General Goddard:

We represent Ann M. Malone, Daniel Boyd, William Buividas, Brian A. Miller, and Donna Rae Neill, residents and taxpayers of the City of Phoenix. Messrs. Boyd, Buividas, and Miller also are active duty or retired City of Phoenix police officers. These taxpayers respectfully request that you initiate a lawsuit against the Phoenix Police Pension Board, its five members, and City of Phoenix Chief of Police Jack F. Harris, in the name of the State of Arizona, to enjoin the illegal payment of pension benefits to Chief Harris pursuant to A.R.S. § 35-212.A.

As you may know, Chief Harris retired from the City of Phoenix Police Department on or about January 19, 2007. Shortly thereafter, Chief Harris was reemployed by the City of Phoenix, albeit as the "Public Safety Manager." As Public Safety Manager, Chief Harris continues to serve as Chief of Police. He wears the uniform of the Chief of Police, calls himself the Chief of Police, and performs all of the same duties and exercises all of the same authority he exercised as the Chief of Police before his retirement. According to the organizational chart of the Phoenix Police Department posted on the City of Phoenix's website, Chief Harris is the head of the City of Phoenix Police Department. He is identified on the organizational chart as "Public Safety Manager/Police Chief Jack F. Harris." Moreover, in May 2009, City of Phoenix City Manager Frank Fairbanks officially confirmed that Chief Harris is the Chief of Police of the City of Phoenix.

A.R.S. § 38-849.D provides that if a retired member of the Public Safety Personnel Retirement System "subsequently becomes employed in the same position by the employer from

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which the member retired, the system shall not make pension payments to the retired member during the period of reemployment.” For purpose of this particular provision, “‘same position’ means the member is in a position where the member performs duties and exercises authority that are the same duties that were performed and the same authority that was exercised by the member before the member’s retirement.”

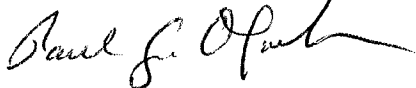
Payment of pension benefits to Chief Harris by the Phoenix Police Pension Board clearly violates A.R.S. § 38-849.D. In addition, monies in the Public Safety Personnel Retirement System are “public monies,” as the Public Safety Personnel Retirement System fund manager is a state agency and has lawful possession, custody, and control over all of the monies in the system. A.R.S. § 35-212.B. Consequently, there is clear legal authority to seek to enjoin the payment of pension benefits to Chief Harris under A.R.S. § 35-212.A.

Should you choose not to initiate the requested action, these taxpayers and active duty or retired officers are prepared to initiate a lawsuit in their own names pursuant to A.R.S. § 35-213.A and to seek any other relief that might be available to them. A draft of the proposed lawsuit is enclosed herewith.

Thank you for your consideration of this matter.

Sincerely

JUDICIAL WATCH, INC.



Paul J. Orfanedes
Director of Litigation

NAPIER, ABDO, COURY & BAILLE, P.C.



James P. Abdo