



November 5, 2019

Christina Strickland, General Counsel  
Thomas G. Causey, Executive Director  
Retirement Systems Division  
Office of the State Treasurer  
3200 Atlantic Avenue  
Raleigh, NC 27604

Re: City of Charlotte Employee Retirement Concerns

Ms. Strickland and Mr. Causey:

I want to thank you both for your assistance and attention in working with Deputy City Attorney Hope Root and myself in the above referenced matter. This letter will serve as the City's response to Mr. Causey's telephone conversation of October 8 with and follow up letter of October 31 to Charlotte City Manager Marcus Jones in which he requested the City's reemployment policies. This letter will also serve as the City's response to Ms. Strickland's email to Hope Root of October 18 in which she provided the legal analysis of the Retirement System Division's tax counsel on the matter of the recently announced retirement plans of Charlotte Police Chief Kerr Putney.

**Charlotte Retiree Rehire Policies** – all City employees who are members of the Local Government Employees Retirement System (LGERS) are directed to consult with LGERS staff and the LGERS Member Handbook for guidance and advice on the specifics of their individual retirement situation. It is my understanding that LGERS Staff can be relied upon for the most current and accurate advice on all LGERS policies, procedures and requirements. It is my further understanding that the LGERS Handbook is updated annually and is relied upon by LGERS members for providing accurate retirement information. Our City employees make their retirement and post-retirement plans based in large part on the information and advice they receive from LGERS Staff and the Member Handbook. As to your specific question regarding the rehiring policies of the City, it may be best to separate our employees into 3 separate and distinct groups for discussion as follows:

- a. **Charlotte Mecklenburg Police Department (CMPD) Sworn Law Enforcement Officers (LEO's)**: These employees have the attached written hireback policy titled "Hireback SOP" with an effective date of 10/25/2018. In all instances, consideration of an officer for a hireback position does not begin until the officer has established a retirement date and received an official retirement letter from the NC LGERS. Compliance with LGERS requirements is a condition precedent to being considered for re-employment and retirees seeking hireback status are

directed to contact LGERS to discuss their earnings limitations and their individual employment situations.

It should be noted that CMPD officers differ from non-CMPD and CMPD civilian employees because the NC Criminal Justice Education and Training Standards Commission requires LEO's to decide *before they retire* if the officer intends to continue their NC law enforcement certification and whether CMPD will continue to hold that certification. This submission process necessarily requires the officers, prior to retirement, to contemplate whether they would like to return to work for CMPD in some capacity after his or her retirement.

The CMPD hireback policy reflects that an officer is not made a promise to return to work before retirement. Rather, the policy states that the employee must have already submitted retirement paperwork with a certain date of retirement before the officer can be considered, and hireback status is not guaranteed.

When an officer returns to work for CMPD, they are not in the position that they were in prior to retirement; rather, they are brought back only if there is a special task needed or there is a need for special events. Neither of these positions are equivalent to a regularly employed officer. When they return to work after retirement, it is on a limited basis and they are not given benefits; rather, their healthcare is retiree healthcare, which is more expensive and slightly different from current employee healthcare, and their reduced work position and schedule are subject to and in compliance with the LGERS plan of less than 1,000 hours per calendar year.

- b. **Charlotte Fire Department Uniformed Sworn Firefighters:** These employees are members of the Charlotte Firefighters' Retirement System, which is separate from LGERS. Therefore, any rehire policy would be irrelevant to LGERS.
- c. **All Other Nonsworn City Employees:** The City has no return to work policy for nonsworn employees and simply directs employees who may be interested in returning to work for the City to consult with LGERS Staff and provides them with the LGERS Member Handbook.

Please let me know if you need additional information on the City's rehire practices.

**Legal Analysis of the Announced Retirement Plans of CMPD Police Chief Kerr Putney** -- In response to Ms. Strickland's email to Hope Root of October 18 that included the legal analysis of your tax counsel, the City engaged the law firm of Poyner & Spruill to provide an independent outside opinion on the legality of the Charlotte Mecklenburg Police Chief Kerr Putney's announced retirement plans both from a state law and IRS Code perspective. I have attached a copy of that opinion for your review. Though the opinion speaks for itself, I would like to add a couple of practical points to that opinion for your consideration.

As you are aware, on October 7, Chief Putney and City Manager Jones announced the plan for Chief Putney to officially retire on January 1, 2020. After the statutorily required break in service, the plan further contemplated that Chief Putney would return as Charlotte's Chief of Police in a temporary employment capacity that would end shortly after the conclusion of the Republican National Convention (RNC) scheduled for late August of 2020. The dual purpose of this plan was to allow Chief Putney to retire at a time most financially advantageous to him while

allowing him to honor his commitment to the Charlotte community and our relevant partners to serve as Charlotte's Chief of Police during the RNC.

Chief Putney proposed this plan after receiving substantial input and advice from the LGERS staff who were well aware of his objectives<sup>1</sup>. At no point in time prior to the October 7 retirement announcement was he made aware that this future temporary employment arrangement could not be discussed, contemplated or agreed to prior to his retirement date. The City's basic position is that there is nothing in either state law (specifically NCGS 128-21) or in the LGERS policies and procedures (the Member Handbook) that prohibits this arrangement so long as he abided by all the limitations of his *temporary employee* status. To date, I have not seen a legal analysis (including the analysis provided to you by Groom Law) that offers a contrary reading of NCGS 128-21 other than your comments that the statutes have not kept up with the IRS Code and that the Code supersedes the statutes.

Based on our past conversations, it appears that the primary offending act in this matter is the combination of the agreement and public announcement of Chief Putney's retirement plan prior to his actual retirement date. The City would acknowledge that more artful and legally precise language could have been used in our press release and Chief Putney's video announcing his retirement plans and we would be more than happy to clarify the tenants of the plan in a manner that would satisfy the retirement system. However, based on public comments attributed to retirement system officials, it is the pre-arranged retirement plan itself that is the problem thus effectively leaving no available method of curing this matter. Given the amount of time Chief Putney spent consulting with LGERS staff in guiding his retirement plans, it is difficult to explain why he was not advised of this potential problem while he was seeking advice on his retirement planning.

It is our sincere hope and desire that you will reconsider your decision on Chief Putney's announced retirement plans as we feel strongly that it is in compliance with all applicable LGERS provisions, state law and IRS Codes. Given the timing of this matter, it is our hope that we can reach an amicable solution in the very near future. Please let me know if you wish to discuss this matter further.

Sincerely,

Patrick W. Baker

City Attorney

Cc: Marcus Jones, City Manager  
Kerr Putney, CMPD Police Chief  
Hope Root, Deputy City Attorney

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<sup>1</sup> Though Chief Putney relied heavily on LGERS staff for advice and direction in creating his retirement plans, it should also be noted that nothing in Section 10 of the LGERS Member Handbook titled, "Returning to Work After Retirement" (Revised January 2019) supports the position that a pre-arranged plan to return to employment as a temporary employee with an LGERS employer is prohibited.