CITY OF SWEETWATER

ELECTED OFFICIALS PENSION BOARD MEETING

MEETING DATE: WEDNESDAY, AUGUST 8, 2018 AT 4:00 PM COMMISSION CHAMBERS, 500 SW 109 AVENUE

1. ROLL CALL.
2. PLEDGE OF ALLEGIANCE.
3. REQUEST OF FORMER COMMISSIONER JOSE M. DIAZ TO COLLECT RETIREMENT.
4. GENERAL BUSINESS.
5. ADJOURNMENT.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS PENSION BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. PERSONS WHO NEED AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS MEETING SHOULD CONTACT CITY CLERK CARMEN J. GARCIA AT 305- 221-0411 BY NOON ON THE DAY BEFORE THE MEETING IN ORDER TO REQUEST SUCH ASSISTANCE.

Ralph Ventura
City Attorney
RVentura@CityOfSweetwater.Fl.gov

May 11, 2015

Via Email Only

The Honorable Jose M. Diaz
Mayor
City of Sweetwater

Re: Status of Your Pension

Dear Honorable Sir:

You have asked the following verbatim:

> After meeting with George Alvarez, Pension Investment Advisor, I am write to you requesting an opinion in your capacity as Pension Board attorney. Our reading of section 2-181 (shown below) indicates that currently my highest year W-2 wages is 2014. Moreover, as I begin my tenure as commissioner, my wages will decrease substantially so that my W-2 for 2015 and 2016 round up the last three years. If so as long as I do not generate W-2 wages as Commissioner in 2017 there should be no change to what I am currently entitled other than my entitlement percentage increases to 100%. Please indicate whether this is accurate or what is the correct impact to my pension benefits each additional year I am in office.

Please accept the following as my answer.

Summary Answer

For reasons stated below, it is my opinion that your time in office since August 6, 2013 does not and cannot "constitute service" under the Elected Officials Pension Plan (the "Plan") so as to entitle you to a pension at the mayoral rate.

Analysis

My previous oral opinion on this matter differed substantially and was based on my then-analysis that since August 6, 2013 you have been a city commissioner serving in the role of interim mayor. Had my original analysis held sway, this letter would be markedly different. However, in light of the Third

District's opinion (the "Opinion") my previous analysis has proved to be incorrect and must be modified. *Diaz v. Lopez*, ___ So.3d ___ (Fla. 3DCA 2015), 2015 WL 1930318.

Although ultimately unsuccessful in its intended purpose, the Third District accepted your counsel's (JC Planas, Esq.) argument that the "only common sense interpretation of (the) facts is that (you are) presently the Mayor of the City of Sweetwater". Appellant's Brief at page 11. The Opinion states that when you "accepted the position of mayor" you "could not, and did not, function in both offices at the same time". In doing so, the Third District interpreted the Charter as guaranteeing your "right to return to (your) city commission seat upon the expiration of (your) current mayoral term", at which time you would resume your position as commissioner.

Essentially, the Third District held that you are not a commissioner serving as interim mayor but rather you are in fact a mayor who holds "an entitlement (to your) city commission seat for two additional years." This proves problematic for purposes of your pension.

The Elected Officials Pension Plan states in §2-176 of the City Code that the term elected officer "shall mean the mayor or a commissioner *as elected* in accordance with sections 3.03 and 4.05" of the City Charter. [emphasis supplied.] Obviously, although the Third District has ruled that you are mayor you are not and have never been "elected" to this office under §4.05 of the Charter. Consequently, you are and have been perforce an appointed official. Section 2-176 of the City Code further states that service "shall mean actual time in office *as an elected officer*" and specifically that "*appointment to an elected office shall not constitute service*." [emphasis supplied.]

As you were not serving "actual time in office as an elected officer", ie, commissioner, but rather were serving an "appointment to an elected office", ie, mayor, it is my considered legal opinion that your time in office since August 6, 2013 does not and cannot "constitute service" under the Plan so as to entitle you to a pension at the mayoral rate.

I trust the foregoing has been informative.

Most Respectfully,

[digital signature]
Ralph Ventura, Esq.
City Attorney
XC: City Clerk
The Honorable Jose Bergouignan, Jr.
The Honorable Orlando Lopez
Jorge Alvarez, SunTrust