

# **Bond Case Briefs**

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## **PENSION FUNDING - ILLINOIS**

### **Board of Trustees of City of Harvey Firefighters' Pension Fund v. City of Harvey**

**Appellate Court of Illinois, First District, Fifth Division - August 4, 2017 - N.E.3d - 2017 IL App (1st) 153074 - 2017 WL 3388848**

Firefighters' pension board brought action against city seeking a declaratory judgment, a writ of mandamus, injunctive relief, and an order compelling enforcement, alleging that city had underfunded firefighters' pension fund and breached a settlement agreement in which city agreed to make certain contributions to the fund.

On motions for summary judgment, the Circuit Court granted pension board's motion for declaratory judgment, injunctive relief, and enforcement of settlement agreement, and denied summary judgment for a writ of mandamus. City appealed and pension board cross-appealed.

The Appellate Court held that:

- Evidence supported a finding that fund was on the verge of default, establishing an enforceable constitutional right to funding;
- City's funding of firefighters' pension fund failed to comply with requirements of Pension Code;
- City breached settlement agreement by failing to make certain agreed-upon contributions;
- Pension board was statutorily authorized to bring action against city for violations of the Pension Code;
- Pension board's delay in bringing suit did not waive its right to enforce settlement agreement;
- Evidence supported damages award; and
- Enactment of pension tax levy was not a mere ministerial act subject to a writ of mandamus.

Evidence of city's blatant disregard for firefighters' pension fund over a long period of time, and of the dwindling status of pension fund assets, supported a finding that fund was on the verge of default, establishing a valid and enforceable state constitutional right to funding. Fund was surviving on contributions paid into the plan by the firefighters and the interest and other money received on the funds invested, fund was being forced to sell assets to pay current pension benefits, fund had not undergone an audit for a number of years, city comptroller invoked his Fifth Amendment privilege against self-incrimination and refused to answer questions concerning city's financial conditions, city had contributed less than ten percent of the annual actuarial requirement six out of nine years, and city had no plans to correct its handling of pension crisis.

City's funding of firefighters' pension fund failed to comply with requirements of Pension Code; city failed to follow any apparent statutory formula in its contributions to fund, city had failed, over the course of multiple years, to levy any money for the pension fund, city had contributed less than ten percent of the annual actuarial requirement six out of nine years, and fund was using firefighters' contributions and interest payments to pay its beneficiaries.

City's enactment of pension tax levy was not a mere ministerial act subject to a writ of mandamus.

Even though Pension Code mandated annual contributions to pension fund according to an annual actuarial evaluation, city retained discretion in making calculations as to the amount it must levy to produce the amount necessary to meet required contributions.

City breached settlement agreement by failing to make certain agreed-upon contributions to firefighters' pension fund, notwithstanding city's claim that it experienced a shortfall and had to allocate its resources accordingly. City was entitled to charge a proportionate amount of the shortfalls to the pension fund's levy, but given its contractual obligation, city could not charge the entirety of the shortfall to the pension fund.

Damages awarded firefighters' pension board in action against city for failure to adequately fund pension fund properly consisted of the accumulated contribution deficiency, rather than merely the recommended contribution amount from the most recent annual actuarial valuation.