

Town Council Meeting 3/27/23 NB 4: Response to Questions from Councilor David Gleason regarding Town Defined Benefit Pension Plan, and Fitzmorris V. Portsmouth Town Council Open Meetings Act Complaint. / C. Levesque & D. Gleason

The topic of this agenda item probably began several years ago, but surfaced again with questions that arose during the recent audit presentation. 2 citizens that evening claimed that they have been seeking information/answers for some time now and I am hoping that this agenda item gets us to that point.

I emailed Mr. Rainer on 3/8/23 with some questions related to the Town's now closed pension plan and a recent ruling of an OMA violation by the AG. Questions were raised during the 2/27/23 Council meeting about the 2022 Financial Audit and pension plan. In addition, allegations have been made in the past about some new hires being added to a closed plan and some existing employees, previously frozen in the plan as of 7/1/12, being re-entered into the pension plan.

Mr. Rainer replied to the questions by email on the same day and sent my questions and his responses to all Town Councilor's (TC) and included the Finance Director (FD), Town Solicitor, (TS) and 2 Lawyers with the legal firm that the Town typically hires for Contract Negotiations. There were 9 attachments included with the email, 5 pertaining to the Open Meeting Act Violation as declared by the AG on 1/19/23 based on an inquiry made on 7/27/2022 by a Portsmouth citizen. I asked about the way this matter was handled, questioning whether the TC members were informed in July of 2022 and Jan of this year when the AG rendered his decision, Mr. Rainer admits to not informing the TC when the response from the AG about the complaint was received on either occasion. I want to remind all that the complaint was against the TC, yet Mr. Rainer and presumably the Town Solicitor, chose not to disclose this to the TC. Not being on the TC then, I am deriving this information from his response to me.

He reasoned, "We do not normally inform the Council of these types of matters until there is an indication the Town will be fined or there will be a finding of injunctive relief." In my opinion, I believe that the importance of this complaint was downplayed and that the Council should have been notified and apprised of the Town's response in July of 2022. Again, the complaint was against the Council, and without a crystal ball, how could anyone predict the outcome, were we guilty or not guilty of the violation, Fines, injunctive relief etc. While I was not on the TC then, I was here when the AG ruled on his findings. Again, this Council was not informed until I questioned Mr. Rainer during his Town Administrator (TA) report at a Feb. TC meeting.

To conclude, the TC is made aware of many things by the TA routinely, so I suggest that matters of this type be included and that the TA reviews and updates whatever policy he may have about informing the TC in the future. If there is a policy, I would like to see it and review it for possible changes so that this does not happen again.

Regarding the Pension issue, the key dates to consider: 11/13/12 TC votes to close the Town's defined Pension Plan. New Hires would be offered a 401K plan and Town Hall Management Employee's plans were to be frozen as of July 14/2014 and fall into a 401K plan (ref. Attachment 6). On 10/14/14, 2 Town Hall Mangers asked to be "unfrozen" at a TC meeting. The TC voted not to change the implemented Pension plan changes.

Relative to my concerns and questions about the Town's closed Pension Plan, I'll begin with a comment about the agenda backup material. There are 15 attachments, the last 5 pertaining to the OMA violation as previously sent to all Council members and the 10 remaining attachments, pertaining to the pension plan. Of these 10 attachments, 8 are new material not included with the response to my original email inquiry. A lot of documentation for a TC to try to decipher, but not enough for someone only reviewing the agenda to decipher.

So what's worse than spending a weekend compiling dates and information to try to figure out who to point the finger at, those who changed the Pension Plan, whether intentional or not, in secret or not, or those that used the loophole to hire new Town employees and let them into a closed Pension System, or someone that received legal advice that they could "reinstate" 2 Town Mgmt. employees into the Pension system without TC approval? Whether 1 or more were at fault, they managed to exacerbate the problem to a level that created not only a Notice of Violation from the AG, but "X" amount of people in the School Dept., and within the Town, receiving retirement benefits in a Pension Plan that had been closed in 2012. All at the Expense of the Portsmouth Tax Payer!

Two councilors, Councilor Hamilton, and I were sitting councilors in 2012, when major efforts were made in pension reform. A difficult time for Portsmouth employees, the Town was notified that our pension plan funding was at critical status, less than 60% funded. I believe we were below 55 % funded at that time, right about where we are 10 years later.

Major changes to the Town's Pension Plan were instituted in 2014, having been proposed by the Pension Advisory Committee in 2012, the TC voted 11/13/12 to close the pension plan to new hires of the town to insure that the pension plan would continue to pay out to existing and future retirees. The Finance Director, at the time, described, "a major financial issue related to the Town's Pension Plan and Unfunded Accrued Liability." He also said that the Town's "approach to pension reform has been one of respect and fairness." (Attachment 6). At this time, the State of RI, together with many RI Communities and Private Industry businesses were all making plans to deal with underfunded pension plans.

We have heard that the school Dept. put at least 2 people as new hires into the Town Pension Plan in 2017 and 2021. I believe that a 3<sup>rd</sup> person was hired in 2017 or 18, entered into the Pension Plan, but has since left. Were the new changes to close the plan meant for all Town Employees, including the school dept., I believe they were. After all, it is called "The Pension Plan for Employees of the Town of Portsmouth, RI."

Town Management Employees pension plans were frozen on 7/1/14. Did this mean closed? Closed to additional contributions they were now enrolled in a 401K Direct Contribution (DC) Plan. At that time, they received their normal 2% raise plus an additional 5% and \$5000/year for 5 years. On 10/14/14, 2 of the 3 managers came before the TC asking to have their pension "unfrozen" but were denied by unanimous vote. The 3<sup>rd</sup> person had accepted the DC 401K plan at that time.

There was a lot of research necessary to investigate an allegation that people were added to a closed pension plan, closed meaning no longer open for new hires beyond 7/1/12. As it turns out, whether intentional or not, it was lacking on verbiage concerning School Dept. employees, specifically School Management employees. The plan did address the three Town Management employees, of which at least two were "put back into the pension plan", a plan that they technically never left, but were unable to contribute to after the cut off day of 7/14/14.

Sometime in 2015, Mr. Rainer was hired as TA. At the Feb 22/2016 TC meeting, a Pension Plan Restatement dated 2/16/16, was presented to and approved by the TC. We were told it was required by the IRS and it was compiled by Finance Directors of the Town and School Dept. as stated by Mr. Rainer during the 4/8/22 edition of Portsmouth This Week .As it turns out, whether intentional or not, the Pension Plan was lacking in language concerning school dept. management employees. Somehow, 7 Councilors, in addition to the TSA and FD missed this so-called loop hole, something I would consider to be an omission, that led us here today for discussion. Mr. Rainer also mentioned that there was a so-called codicil in the Restatement allowing non-union School Mgmt. to be brought into the Pension. The first 1 or 2 people added in 2017 went unnoticed. Mr. Rainer says he became aware sometime after a person was added in 2021, it appears to have been 8/17/21.

Somehow, the Town's HR person, who had been initially hired to work jointly for the Town and School Dept., did not see a hiring 4 years prior. Perhaps she wasn't employed yet? Regardless, in some time frame, members of at least 1 union found out that people had been added to the Pension Plan, while the Town was telling them that the Pension Fund was closed. Somehow, it was found that the School Dept. had discovered this Loophole in the plan, an omission to me, but I do not consider either description as a codicil, as previously stated.

Whether intentional or not, the loophole or omission was exploited to give at least 2 new school hires a Pension with their employment. In hindsight, could something have been done at this point to rectify the situation with the hires from 2017 and 2021? Perhaps yes maybe no, but actions taken after this discovery were voluntary on the Town side and created the situation we are in today.

Also on 4/8/22, Mr. Rainer said, "People are not being added into the Pension without Council's knowledge." A contradiction or True statement, Question? Probably true regarding the 2-3 hires within the School Dept. but what about the 2-3 Town Mgmt. employees? After telling at least the Police Union that the Pension Plan is closed, the TC appears to vote in Exec Session on 9/24/20 to fix the loophole/omission in the Pension Plan. At the next TC meeting on 9/28/20 the TC votes publicly to fix the loophole/omission. It's still not clear to me how the first person listed on the top of the school mgmt. hire list got into the pension plan after the loophole was closed. Is this person in the Towns plan or not?

To further muddy the issue, our Town Mgmt. employees find out about the new School Dept. employees added to the plan and want back in. How did they get back in? Was there a TC meeting where this was discussed? More questions than answers. Why would you bring these Town Hall Mgmt. employees back into the pension plan after seeing the problems caused by the School Dept, that are costing the Portsmouth Tax payer.

Above the highly redacted information provided on pg. 3 of attachment 1 it reads "This was done by the Town Council". Not having been there and knowing that exec minutes are restrictive, for lack of better words Are you saying that the TC discussed and voted in exec session on a pension matter? I only raise the question as I understood that pension plans were not items to discuss in closed session.

I would expect that there is nothing that I could say that will change what I would consider to be improper actions made by several Town Employees relative to the Pension Plan and I'll wrap up with a few other concerns. I'm concerned as to whether the TA and TC have been receiving clear and accurate advice from legal counsel regarding the OMA, and subjects discussed previously in exec session. Also,

whether pension related changes can be made solely by the TA. I would also question advice given to Mr. Rainer regarding the ability to reinstate employees into the Pension system when reference was made to Pension Article II , section 2 (C) which refers to re-entering employ of the town after discharge or separation from active duty within the Armed Forces.

Discuss the idea of Codifying the Pension Plan which would require a Public Hearing to make changes to the Pension Plan. Audit of Plan? How do we know if re-entered employees have returned X amount of \$\$\$. How do you verify/track it?

David M. Gleason 3/27/23