PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARD OF TRUSTEES MEETING

October 21, 2013

MINUTES

Present:
Mr. Brian Tobin, Chairman, Trustee
Mr. Gregory Ferguson, Vice Chairman, Trustee – by phone
Mr. Jeff McHenry, Trustee
Ms. Randie Stein, Trustee – by phone
Mr. Richard Petrenka, Trustee - Excused
Mr. Lauren Kingry, Trustee – by phone
Mr. William Davis, Trustee – by phone

Others Present:
Mr. Jim Hacking, Administrator
Mr. Jared Smout, Deputy Administrator
Ms. Ivy Voss, Assistant Attorney General
Mr. Michael Sillyman, Kutak Rock

1. Call to Order; Roll Call.

Chairman Tobin called the meeting to order at 1:35 p.m.

Mr. Brian P. Tobin, Chairman

2. Appropriate Action to ratify instructions given to the Board's attorneys in executive session on September 25, 2013 regarding the authorization to file a lawsuit.

Mr. Brian P. Tobin, Chairman

Mr. Tobin stated that on September 25, 2013 the Board instructed its attorneys in executive session to take action to file a lawsuit.

After instructing its attorneys in executive session and upon returning to the public session, the Board did not vote to authorize its attorneys to take the actions authorized in executive session.

The Arizona Attorney General's Agency Handbook, Section 7.9.7, revised in 2011, addresses the procedure to be taken when a public body instructs its attorneys in executive session. The Agency Handbook states, “The best practice is for a public body, upon return to the open session, to vote to authorize its attorney to act ‘as instructed in the executive session.’"

Because it is uncertain whether the Board’s failure to vote in the public session to authorize its attorney to act as instructed in the executive session is a violation of the open meeting law, the best practice is to ratify the Board’s action.
**MOTION: 1-10/21/13**

**Motion:** At 1:40 p.m.

To ratify action concerning instructions to attorneys in executive session. On September 25, 2013, the Board instructed its attorneys in executive session to take action to file a lawsuit.

After instructing its attorneys in executive session and upon returning to the public session, the Board did not vote to authorize its attorneys to take the actions authorized in executive session.

The Arizona Attorney General’s Agency Handbook, Section 7.9.7, revised in 2011, addresses the procedure to be taken when a public body instructs its attorneys in executive session. The Agency Handbook states, “The best practice is for a public body, upon return to the open session, to vote to authorize its attorney to act ‘as instructed in the executive session.’”

Because it is uncertain whether the Board’s failure to vote in the public session to authorize its attorney to act as instructed in the executive session is a violation of the open meeting law, the best practice is to ratify the Board’s action.

**Moved by:** Mr. McHenry

**Seconded by:** Mr. Kingry

**Discussion:** None

**In Favor:** Unanimous – Mr. Petrenka was excused.

**Motion:** Passes

This agenda did not include a Call to the Public. The Board authorized Ms. Ann Chapman to speak. She stated that she represents Mr. Orlich and that she was hoping to provide the Board with an update that would have been relevant to the Board’s consideration of the ratification motion. However, since the Board has already voted on the motion, she stated that what she had to say would no longer be relevant.

3. **Appropriate Action to approve the filing of a lawsuit against former employee Anton Orlich, pursuant to the instructions given to the Board's attorneys in executive session on September 25, 2013.**

*Mr. Brian P. Tobin, Chairman*

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**MOTION: 2-10/21/13**

**Motion:** At 1:44 p.m.

To approve the filing of a lawsuit against former employee Anton Orlich pursuant to the instructions given to the Board’s attorneys in executive session on September 25, 2013.

**Moved by:** Mr. McHenry

**Seconded by:** Mr. Ferguson

**Discussion:** Ms. Ann Chapman, representing Mr. Orlich, provided the Board with an update, saying that since September 25, her office had returned to Mr. Silyman the original paper copies of any and all potential proprietary PSPRS documents that Mr. Orlich had in
his possession, although some documents were earlier provided to counsel who was representing PSPRS prior to Mr. Sillyman’s engagement.

She added that her office had created a forensic image of all electronic documents and had conveyed to Mr. Sillyman a hard drive which contains copies of these electronic documents. Mr. Sillyman now has all paper documents and copies of electronic documents which contain potentially privileged or confidential PSPRS data or information and Mr. Orlich is no longer in possession of any of that data or information.

In Favor: Unanimous – 4 ayes on the phone, 2 ayes in the office. Mr. Petrenka was excused.

Motion: Passes

4. Adjournment.

Mr. Brian P. Tobin, Chairman

The meeting was adjourned at 1:45 p.m.

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Brian P. Tobin, Chairman

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Gregory Ferguson, Trustee, Vice Chairman

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Randie A. Stein, Trustee

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Jeff Allen McHenry, Trustee

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Excused

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Richard J. Petrenka, Trustee

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Lauren Kingry, Trustee

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William C. Davis, Trustee