

ILLINOIS APPELLATE COURT RECOGNIZES STATUTORY RIGHT TO PENSION FUNDING

In *Board of Trustees of the City of Harvey Firefighters' Pension Fund v. City of Harvey*, the First District of the Illinois Appellate Court confirmed that municipal pension funds established under state law for the benefit of municipal employees have a right to sue in order to recover delinquent contributions. This decision makes it clear that municipalities have an obligation to levy a tax in order to contribute to their employees' pension funds, and that this obligation may be enforced by a lawsuit. In short, this decision will make it harder for cities, townships, and other municipalities to avoid their obligations to their employees.

City of Harvey is the latest opinion in protracted litigation between the City of Harvey and the Board of Trustees of the Firefighters' Pension Fund that has been ongoing for almost thirty years. It is not necessary here to delve deeply into this history, except to say that the City has been drastically underfunding its pension obligations for a very long time.

The Illinois Pension Code mandates that a city levy taxes at a rate that will produce a sum sufficient to meet the annual requirements of the city's pension funds. Illinois Courts have generally been permissive in reading this requirement, allowing cities to have discretion in how aggressive they should be in using the levy power as long as the pension fund is being funded. This has led to municipalities underpaying their pension obligations. In *City of Harvey*, however, the Court found that the City of Harvey completely exceeded the discretion provided in the Pension Code. The City failed to levy or contribute any money to the Firefighters' Pension Fund in the years 2011-2013, failed to levy while making small contributions in 2005 and 2006, and imposed a levy which was far too small in 2007, 2010, and 2014. Even in years in which the city levied a significant amount, 2008 and 2009, there is no indication that the levy was assessed using any sort of formula meant to meet the requirements of the Pension Fund. Finally, even when the City imposed a levy, the monies raised would disappear and were not forwarded to the Pension Fund.

The Court concluded that there was no effort by the City to contribute to the Pension Fund in accordance with the statutory requirement, and assessed over \$10,000,000 in damages against the City, payable to the Pension Fund, to remedy the failure.

The facts in this particular matter are extreme. The City of Harvey completely ignored its statutory duty to levy and contribute to the Pension Fund. It is not clear, at this point, whether the statutory right to sue would be expanded to less-extreme cases of malfeasance or to allow other plaintiffs besides Pension Funds to sue. However, it is clear from this case that cities cannot simply ignore the duty they have to levy and make required payments to their employees' Pension Funds.

ASHER, GITTTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 1900
Chicago, IL 60606 - 312.263.1500
© 2017 Asher, Gittler & D'Alba, Ltd.

All rights reserved.
Dated: August 25, 2017
This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

