

MEMORANDUM #14, 2009

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Selection of the Fifth Member

DATE: February 23, 2009

In recent months, some controversy has arisen in regard to several retirement boards and their selection of a fifth member to serve on their retirement board. General Laws, Chapter 32, Section 20 discusses the selection of the fifth member to various retirement boards. Section 20, Subsection 4(b) provides in pertinent part that as to the composition of the retirement board for a city or town, there shall be:

... [A] fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years (Emphasis supplied.)

Although this subsection admittedly refers only to the retirement boards of cities and towns, references to the other retirement boards specifically enumerated in Section 20 contain virtually identical language relating to the selection of the fifth member. In regard to the State Retirement System, General Laws, Chapter 10, Section 18 provides that the State Board of Retirement shall include “a fifth member who shall not be an employee, a retiree, or official of the commonwealth and shall be chosen by the other four for a term of three years.” The Teachers’ Retirement Board, which has seven members, provides that the seventh member “shall be chosen by the other six for a term of four years.” General Laws, Chapter 15, Section 16. Thus, this memorandum is applicable to all retirement systems except those of the counties and those of certain cities and towns where the local option described in G.L. c. 32, § 20(4)(c) has been exercised. In regard to the Teachers’ Retirement System, all references to the “fifth” member should be read to refer to the “seventh” member. All references to the “other four members” should be read as the “other six members.”

The above-referenced statute unambiguously provides that the fifth member “shall be chosen by the other four members.” This means that in regard to the selection of the fifth member, all other members of the retirement board must be present when this individual is selected. An attempt to appoint a fifth member without the other four members all participating and all voting will be invalid. The vote need not be unanimous. A person may be appointed by a simple majority. But the four other members are obliged to select the fifth member, so those four voting members of the retirement board need to be present, and all four need to vote. It goes without saying that if the incumbent is vying for re-appointment, or even if he is not, he should not participate in the voting.

Pursuant to our authority under G.L. c. 32, § 21(4) to review all determinations of retirement boards, the Commission should be notified in writing when a fifth member is selected. The notification should include a record of the vote of the four board members, including a statement that all four members were present and all four voted.

We trust the foregoing will be of some assistance to you.

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