



# 2012-031

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Greg Medders, Chairman  
Tuscaloosa Police and Fire Pension Fund  
14480 Opal Way  
Duncanville, Alabama 35456

Pension Fund – Police Officers –  
Firefighters – Creditors – Child Support –  
Policies and Procedures

The Tuscaloosa Police and Fire Pension Board (“Board”) is authorized to deduct and make court-ordered child support payments. The Board is required to establish procedures as necessary to handle the processing of domestic relations orders issued pursuant to a state domestic relations law.

The Tuscaloosa Police and Fire Pension Board is prohibited by statute from deducting and making court-ordered debtors’ payments as a convenience to the requesting retiree.

Whether the Tuscaloosa Police and Fire Pension Board is authorized or prohibited from deducting from retirees’ pension checks and making payments to the United States Bankruptcy Court when the retiree volunteers or requests to enter bankruptcy is a matter that should be resolved by the United States Bankruptcy Court.

Dear Chairman Medders:

This opinion of the Attorney General is issued in response to your request on behalf of the Tuscaloosa Police and Fire Pension Fund (“Fund”).

### QUESTION 1

Is the Tuscaloosa Police and Fire Pension Board authorized to deduct and make court-ordered child support payments, as a convenience to the requesting retiree, provided the Board has established procedures in place as needed for the processing of domestic relations orders issued pursuant to a state domestic relations law, pursuant to provisions of subsection 9.03 of Section 10 of Article 9 of Act 99-568?

### FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Tuscaloosa Police and Fire Pension Board receives requests from time to time from retired police and fire personnel for the City of Tuscaloosa asking that the Board deduct and forward portions of their pension income for various reasons. Your questions address the various situations in which the Board is asked to make deductions.

Your initial question seeks clarity regarding whether the provision of subsection 9.03 of Section 10 of Article 9 of Act 99-568 authorizes or prohibits the Tuscaloosa Police and Fire Pension Board to deduct court-ordered child support payments provided that the Board has established procedures in place as needed for processing domestic relations orders.

Subsection 9.03 states that “[t]he board shall establish procedures as needed for processing domestic relations orders that are issued pursuant to a state domestic relations law.” 1999 Ala. Acts No. 99-568, 1220, 1251. Based on the plain language used within the act, the Board is authorized to process domestic relations orders. To that end, the Board is responsible for establishing procedures to help with this process.

### CONCLUSION

The Tuscaloosa Police and Fire Pension Board is authorized to deduct and make court-ordered child support payments. The Board is required to establish procedures as necessary to handle the processing of domestic relations orders issued pursuant to a state domestic relations law.

QUESTION 2

Is the Tuscaloosa Police and Fire Pension Board authorized or are they prohibited by statute from deducting and making debtors' court-ordered payments as a convenience to the requesting retiree pursuant to the provisions of subsection 10.01 of Article 10 of Section 11 of Act 99-568?

FACTS AND ANALYSIS

Subsection 10.01 of Section 11 of Article 10 of Act 99-568 states as follows:

Except as provided in 9.03, no portion of said fund whether in cash or securities either before or after its distribution by the board to the person or persons entitled thereto under the provisions of this act shall be held, seized, taken, subjected to, detained or levied upon by virtue of any attachment, garnishment, execution, injunction, writ, order, decree or any other process whatsoever issued out of any court of this state, for the payment or satisfaction, in whole or in part, of any debt damage, demand, claim, judgment or decree against any beneficiary of such fund; but shall be exempt therefrom without any claim thereof. Nor shall any assignment be made of any portion of said fund or of any right to an interest therein by any beneficiary or prospective beneficiary thereof, and all such assignments or attempted assignments shall be void. Said fund shall be sacredly kept, held and distributed for the purpose named in this act, and for no other purposes, whatsoever. Neither the employment payment of benefits to, nor the retirement of any person, nor the payment of any money into such fund by any person nor any act of the board or of the city governing body shall give right to any contractual or vested rights hereunder; but the Legislature reserves full power and right to amend, or repeal any and every provision hereof and make disposition of such fund.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Subsection 10.01 of Section 11 of Article 10 of Act 99-568 states that no portion of the Fund may be used to pay, in whole or in part, any debt, demand, claim, judgment, or decree. Instead, the Fund is to be kept and distributed for the purposes stated within the act. Based upon the plain language of subsection 10.01 of Section 11 of Article 10 of Act 99-568, it is the opinion of this Office that the Tuscaloosa Police and Fire Pension Board is prohibited from deducting and making debtor's payments on behalf of a requesting retiree.

### CONCLUSION

The Tuscaloosa Police and Fire Pension Board is prohibited by statute from deducting and making court-ordered debtors' payments as a convenience to a requesting retiree.

### QUESTION 3

Is the Tuscaloosa Police and Fire Pension Board authorized or are they prohibited by statute from deducting from retirees' pension checks and making payments to the United States Bankruptcy Court when the retiree volunteers or requests to enter bankruptcy pursuant to the provisions of subsection 10.01 of Section 11 of Article 10 of Act 99-568?

### FACTS AND ANALYSIS

This matter, to some extent, was addressed in response to Question Two. In Question Two, retirees, as a matter of convenience, are requesting the Tuscaloosa Police and Fire Pension Board to pay certain court-ordered debts. Question Three asks whether the Board may deduct from retirees' pension checks to make payments to the United States Bankruptcy Court when the retiree enters into bankruptcy. As noted earlier, Act 99-568 prohibits deductions from the Fund for purposes other than domestic relations court orders.

This Office is authorized to analyze provisions of state law. Bankruptcy consists of federal provisions. Whether the Fund may be required to make distributions as a result of a retiree entering into bankruptcy is a decision best suited for the United States Bankruptcy Court. This opinion does not address federal law and whether federal law preempts the conclusions reached herein. Should a federal bankruptcy court determine that a retiree's account may be garnished, the Fund may be required to release such funds pursuant to the federal court order.

CONCLUSION

Whether the Tuscaloosa Police and Fire Pension Board is authorized or prohibited from deducting from retirees' pension checks and making payments to the United States Bankruptcy Court when the retiree volunteers or requests to enter bankruptcy is a matter that should be resolved by the United States Bankruptcy Court.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division