

February 25, 2010

To: Charter Review Board

From: Mary Helen Farris, Managing Attorney

Re: The Authority of the County to opt out of the Florida Retirement System

---

At the Charter Review Board Meeting of February 22, 2010, the Board discussed the financial status of the Florida Retirement Plan and asked if the County can opt out of the Florida Retirement System.

Attached, please find a copy of the latest report on the Florida Retirement System Pension Plan Funding Status. This should address some of your concerns regarding the financial position of Florida's Retirement Plan.

With respect to whether the county can opt out of the Florida Retirement System, I found a Florida Attorney General opinion which explained the coverage of the Florida Retirement System for county employers as follows:

“Chapter 121, F.S., the "Florida Retirement System Act," is a general law which is uniformly applicable throughout the state to public officials, including county officers and employees. See, AGO 78-159. And see, s. 121.051, F.S., making participation in the Florida Retirement System compulsory as to all officers and employees (with specific exceptions) employed on or after December 1, 1970.” 1986 Fla. AG LEXIS 25, 1-9 (Fla. AG 1986).

In essence, this area is preempted by state law. Consequently, to successfully remove Hillsborough County employees from coverage of the Florida Retirement System would require the State Legislature to change the cited statutory requirements.