

January 23, 2012

Mr. Gabriel Khalife
Kutztown Borough
45 Railroad Street
Kutztown, PA 19530-1112

Dear Mr. Khalife :

Our office has received an inquiry from your municipality seeking our "Disclosures" response as set forth in Act 44 of 2009. This law, among many other changes, added a new chapter to the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984). That chapter, "Standards for Municipal Pension Systems" set forth numerous requirements for municipal pension systems when they enter into "professional services contracts." The term professional services contract is defined as:

A contract to which the municipal pension system is a party that is:

- (1) for the purchase or provision of professional services, including investment services, legal services, real estate services and other consulting services; and
- (2) not subject to a requirement that the lowest bid be accepted.

We believe that your municipality has interpreted our relationship as the administrator of one of the municipality's "municipal pension systems" as subjecting the Pennsylvania Municipal Retirement System (PMRS), and consequentially the Pennsylvania Municipal Retirement Board and staff, to the disclosure requirements of this new law. It is our opinion, based upon a legal opinion issued by the Commonwealth's Office of Chief Counsel for the PMRS, that the agency and our representatives are not subject to the disclosure provisions of the new law.

Let us be clear, the PMRS is specifically defined in the new law as a "municipal pension system" which we understand to mean that we must follow the new law's contracting and purchasing requirements. This agency has entered into three professional services contracts since the new law became effective and we have done so following the procedure outlined in Act 44. Our website (www.pmrs.state.pa.us) contains the "Applications" and the "Disclosure" forms for the three successful bidders awarded contracts by the PMRS. We clearly understand the role of the municipal pension system as a purchaser of professional services under Act 44 of 2009.

What is in need of clarity is the nature of the relationship between the municipality and PMRS as it applies to the requirements of Act 44. The legal distinction starts with the acknowledgement that the pension plan contract for the administration of the municipality's pension plan entered into between the Pennsylvania Municipal Retirement Board (Board) and the municipality does not constitute a "professional services contract" as defined in Act 44. Neither PMRS nor the Board provides participating municipalities "investment services, legal services, real estate services [or] other consulting services." The Board's relationship is not one of service provider.

The Board is not the municipality's agent because the Board, not the municipality, is charged with interpreting a participating municipality's pension plan agreement. Unlike contractual relationships between service providers and a recipient of that service, such interpretation can only be challenged through a formal administrative evidentiary hearing and adjudication in accordance with both the Administrative Agency Law (2 Pa. C.S. §103 et seq.) and the general Rules of Administrative Practice and Procedure (1 Pa. Code §31.1 et seq.).

Additionally, as an independent administrative board of the Commonwealth of Pennsylvania, the Board does not receive personal profit in the administration of a pension plan as a consultant would. As trustees of the Pennsylvania Municipal Retirement Fund, the Board stands in a fiduciary relationship first to the enrolled members and not the municipality's governing body. By including PMRS in the definition of "municipal pension system," the General Assembly distinguished PMRS from other "contractors" with whom a municipality may enter into a contractual relationship. Clearly the Board is not within the domain of those pension service consultants who contract with municipalities to whom bidding and conflict of interest restrictions were made applicable.

We are confident that the disclosure requirements and the competitive open bidding process set forth in Act 44 are not applicable to the services provided by the Board through the PMRS. We trust the foregoing explanation is sufficient to document our reasoning and to explain why we believe we are not required to complete a disclosure form. We would encourage you to share this correspondence with the municipality's governing board and solicitor. We also would strongly encourage you to retain a copy of this correspondence in the municipality's "pension" files as it should be shown to the field auditors from the Auditor General's Office when they next audit the pension plan.

The Board and the staff of PMRS appreciate the support and trust the municipal officials place in the agency by electing to participate in PMRS.

Respectfully,



James B. Allen, Secretary
Pennsylvania Municipal Retirement System