

EXHIBIT 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

(#90909)

CITY OF CHICAGO, a Municipal Corporation,

Petitioner,

vs.

No.

870110134

MARSHALL KORSHAK, RUSSELL EWERT,
ODELL HICKS, THOMAS D. ALLISON,
FRED W. SETTLES, CECIL A. PARTEE,
CHESTER JASKOLKA, RONALD R. NORRIS,
and JAMES McDONOUGH, IN THEIR CAPACITY AS THE BOARD MEMBERS OF THE POLICEMEN'S ANNUITY & BENEFIT FUND FOR CITIES OVER 500,000;
MICHAEL A. COHEN, NORMAN S. HOLLAND, ANN FOLEY, JAMES R. CONMEY, WALTER S. KOZUBOWSKI, RONALD D. PICUR, RONALD MALONEY, and CECIL A. PARTEE, IN THEIR CAPACITY AS THE BOARD MEMBERS OF THE FIREMEN'S ANNUITY & BENEFIT FUND FOR CITIES OVER 500,000;
WILLIAM J. McMAHON, RONALD D. PICUR, CECIL A. PARTEE, WAYNE N. MARSHALL, and EDWARD J. LAIRD, IN THEIR CAPACITY AS THE BOARD MEMBERS OF THE MUNICIPAL EMPLOYEES' ANNUITY & BENEFIT FUND FOR CITIES OVER 500,000;
ROGER E. McMAHON, RONALD D. PICUR, CARMEN IACULLO, and CECIL A. PARTEE, IN THEIR CAPACITY AS THE BOARD MEMBERS OF THE LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND FOR CITIES OVER 500,000,

Respondents.

COMPLAINT FOR MANDAMUS, RESTITUTION,
AND OTHER RELIEF

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COUNT I

Preliminary Statement

1. Count I of this action seeks a writ of mandamus to compel defendants, the board members of the Policemen's Annuity and Benefit Fund for cities over 500,000 and the board members of the Firemen's Annuity and Benefit Fund for cities over 500,000 to comply with their respective statutory obligations to enter into contracts with insurance carriers to provide group health insurance for their funds' annuitants.

Count I also seeks a writ of mandamus to compel the board members of the Municipal Employees' Annuity and Benefit Fund for cities over 500,000 and the board members of the Laborers' and Retirement Board Employees' Annuity and Pension Fund for cities over 500,000 (Laborers' Board) to comply with their respective statutory obligations to approve a group hospital care plan and a group medical and surgical plan for their respective funds' participating annuitants.

Parties

2. Petitioner, City of Chicago, is a municipal corporation, organized in accordance with Ill. Rev. Stat. ch. 24, §1-1-1.

3. Respondents Marshall Korshak, Russell Ewert, Odell Hicks, Thomas D. Allison, Fred W. Settles, Cecil A. Partee, Chester Jaskolka, Ronald R. Norris and James McDonough constitute the retirement board of the Policemen's Annuity and Benefit Fund established in accordance with Ill. Rev. Stat. ch. 108-1/2, §5-178 and

are responsible for, inter alia, administration of Article 5 of the Illinois Pension Code.

4. Respondents Michael A. Cohen, Norman S. Holland, Ann Foley, James R. Conmey, Walter S. Kozubowski, Ronald Maloney, Cecil A. Partee, and Ronald D. Picur constitute the retirement board of the Firemen's Annuity and Benefit Fund (Firemen's Board) established in accordance with Ill. Rev. Stat. ch. 108-1/2, §6-174 and are responsible for, inter alia, administration of Article 6 of the Illinois Pension Code.

5. Respondents William J. McMahon, Ronald D. Picur, Cecil A. Partee, Wayne N. Marshall, and Edward J. Laird constitute the retirement board of the Municipal Employees' Annuity and Benefit Fund (Municipal Board) established in accordance with Ill. Rev. Stat. ch. 108-1/2, §8-192 and are responsible for, inter alia, administration of Article 8 of the Illinois Pension Code.

6. Respondents Roger E. McMahon, Ronald D. Picur, Carmen Iacullo and Cecil A. Partee constitute the retirement board of the Laborers and Retirement Board of the Employees' Annuity and Benefit Fund (Laborers' Board) established in accordance with Ill. Rev. Stat. ch. 108-1/2, §11-181, and are responsible for, inter alia, administration of Article 11 of the Illinois Pension Code.

7. Respondent board members are sued in their official capacities as members of their respective retirement boards.

Factual Allegations

8. Section 5-167.5 of the Policemen's Annuity Fund Act, Ill. Rev. Stat. ch. 108-1/2 §5-167.5, and Section 6-164.2 of the

Firemen's Annuity Fund Act, Ill. Rev. Stat. ch. 108-1/2 §6-164.2 are identical and provide that: 1) "The Board shall contract with one or more [insurance] carriers to provide group health insurance for all annuitants; 2) an insurance carrier is defined as "an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, the Medical Service Plan Act or the Voluntary Health Services Plan Act, which is authorized to do group health insurance business in Illinois"; 3) the board shall pay the premiums for health insurance for each annuitant so that the basic monthly premium for each annuitant will be contributed: a) from the City's tax levy on behalf of the fund up to a maximum of \$55.00 per month for annuitants not qualified to receive Medicare benefits and \$21.00 per month for those who are qualified; and b) where the basic monthly premium exceeds the maximum to be contributed by the City on each annuitant's behalf, such excess shall be deducted by the board from the annuitant's monthly annuity.

9. The statutory provisions of the Policemen's Annuity Fund and Firemen's Annuity Fund concerning group health insurance were effective as of January 12, 1983.

10. Upon information and belief, from January 1983 to the present, neither the Policemen's Board nor the Firemen's Board has contracted with an insurance carrier to provide group health insurance for annuitants.

11. Section 8-164.1 of the Municipal Employees' Pension Statute, Ill. Rev. Stat. ch. 108-1/2, §8-164.1, and section 11-

160.1 of the Laborers' Pension Statute, Ill. Rev. Stat. ch. 108-1/2, §11-160.1 are identical and provide that: 1) each annuitant who is over 65 years of age and had at least fifteen years of municipal employment may participate in a group hospital care plan and a group medical and surgical plan (a plan) approved by the board (emphasis added); 2) the board is authorized to make health insurance payments from the City's tax levy up to \$25.00 per month per annuitant; and 3) if the monthly premium exceeds the \$25.00 statutory authorization: a) the excess may be deducted from the annuitant's annuity at the annuitant's election, or else b) the coverage shall terminate.

12. The statutory provisions of the Municipal Employees' Fund and the Laborers' Fund concerning group health insurance were effective as of July 18, 1985, and August 16, 1985, respectively.

13. Upon information and belief, from July 1985 to the present, neither the Municipals Employees' Board nor the Laborers' Board has approved a plan in which their annuitants may participate.

14. Until the filing of this complaint, the annuitants of all four funds receive health insurance through the City, which is a self-insurer.

Cause of Action

15. Respondents failed to carry out the statutory duties set forth in paragraphs 8 through 14.

16. Respondents are without discretion to refuse or otherwise fail to carry out the statutory duties enumerated in the sections of the Pension Code set forth in paragraphs 8 through 14.

17. The City is entitled to the respondents' execution of their statutory duties as members of their respective Pension Boards as a matter of law.

WHEREFORE, the petitioner prays that the Court:

A. Issue a writ of mandamus compelling the Police Board and Fire Board immediately to enter into contracts with insurance carriers to provide health insurance for their annuitants, and compelling the Municipal Employees' Board and Laborers' Board to approve a plan in which their respective annuitants may participate;

B. Issue a writ of mandamus compelling respondents Police, Fire, Municipal Employees' and Laborers' Boards to pay the excess monthly health insurance premium above the City's statutory tax levy contribution with monies deducted from each annuitant's annuity, and further requiring respondents Laborers' and Municipal Employees' Boards to terminate coverage for all annuitants who elect coverage and decline to pay the excess premiums out of their annuities.

COUNT II

Preliminary Statement

1. In Count II of this action, the City seeks to recover funds wrongfully expended by the City without a statutorily

required appropriation on behalf of annuitants of the four funds from 1980 to the present.

Parties

2-6. The City realleges paragraphs 2 through 6 of Count I and incorporates them by reference.

Factual Allegations

7. From 1980 through the present, the City has paid the health insurance coverage for annuitants of the Policemen's, Firemen's, Municipal Employees' and, Laborers' Annuity and Pension Funds and their dependents by allowing these annuitants and their dependents to use the City's own Health Care Plan.

8. The City is a self-insurer of its Health Care Plan.

9. The excess costs for health insurance paid by the City on behalf of annuitants of the four funds for the period 1980 through June 1987 are: Policemen's Fund - \$27 million; Firemen's Fund - \$9.3 million; Municipal Employees' Fund - \$18.5 million; and Laborers' Fund - \$4.0 million, for a total of \$58.8 million. (All figures rounded to the nearest one hundred thousand dollars.)

10. The City has, from 1980 through June 1987, provided approximately \$58.8 million on behalf of the pension funds for their annuitants over and above the premiums paid by those funds for the annuitants' health insurance costs.

11. The City spent this money for the funds and for the benefit of their annuitants and dependents from 1980 through June 1987 without an appropriation by the corporate authority as

required by ch. 24, section 8-1-1, of the Illinois Revised Statutes, and as required by the yearly Appropriation Ordinances of the City.

Cause of Action

12. The City has wrongfully expended public funds for the benefit of the four pension funds without statutory authority to do so.

13. The City is entitled to recover these funds.

WHEREFORE, the City prays for judgment as follows:

A. Ordering all four Boards to make restitution to the City in the full amount of the subsidies provided their respective funds from 1980 through 1987, plus interest and costs.

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DATED: October 19, 1987

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