

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
9TH DIVISION

ARKANSAS LOCAL POLICE AND
FIRE RETIREMENT SYSTEM

PLAINTIFF

v.

CASE NO. 60CV 2011 5426

ROGER A. NORMAN,
LEGISLATIVE AUDITOR

FILED 11/30/11 12:51:26
Larre Crane Pulaski Circuit Clerk
CF01 DEFENDANT

MOTION TO DISMISS

Comes now the Defendant, Roger A. Norman, Legislative Auditor ("Legislative Auditor"), by and through undersigned counsel, and for his Motion to Dismiss the Complaint for Declaratory Judgment ("Complaint") filed by the Arkansas Local Police and Fire Retirement System ("LOPFI"), states:

1. Pursuant to Ark. R. Civ. P. 10(c), the statements in LOPFI's Complaint, and the Subpoena Duces Tecum ("subpoena") attached thereto as Exhibit "A," are adopted by reference herein.

2. Pursuant to Ark. R. Civ. P. 12(b)(1), the Legislative Auditor moves that this Court dismiss the Complaint for lack of jurisdiction over the subject matter, on two alternate grounds.

I. Inherent subpoena power of the Arkansas General Assembly

3. An examination of the subpoena reveals that the purpose for which it was issued – that is, the underlying investigation or audit – is a proper subject for legislative inquiry, "an audit of a state retirement system in compliance with Arkansas Code Annotated § 10-4-411."

4. Further examination reveals that the records sought by the subpoena – certain information concerning the members in LOPFI's retirement plan(s) – are relevant to the subject of the inquiry.

5. Since, on the face of the Complaint and its exhibit, the subject of investigation is proper for legislative inquiry and the records sought are relevant to the subject, this subpoena is not subject to judicial control or interference.

6. In the absence of power to adjudicate the Complaint, this Court respectfully lacks subject matter jurisdiction, and dismissal is compelled.

II. Speech or Debate clause protection

7. Ark. Const. art. V, § 15 provides that “for any speech or debate in either house, they [members of the General Assembly] shall not be questioned in any other place.”

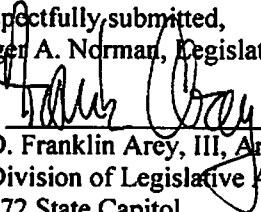
8. The Legislative Auditor’s subpoena constitutes legitimate legislative activity protected by the speech or debate clause of the Arkansas Constitution, as revealed by an examination of the Complaint and its exhibit.

9. Since the protections of Ark. Const. art. V, § 15 apply, this Court is without power to adjudicate the Complaint: legitimate legislative activity “shall not be questioned in any other place.”

10. In the absence of power to adjudicate the Complaint, this Court respectfully lacks subject matter jurisdiction, and dismissal is compelled.

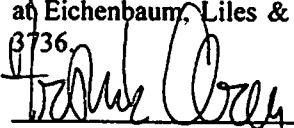
WHEREFORE, does the Defendant, Roger A. Norman, Legislative Auditor, pray that this Court will grant this Motion pursuant to Ark. R. Civ. P. 12(b)(1) and dismiss the Complaint for Declaratory Judgment for lack of jurisdiction over the subject matter; that this Court will hold a hearing on this Motion; and for all other just and proper relief.

Respectfully submitted,
Roger A. Norman, Legislative Auditor

By: 
D. Franklin Arey, III, Ark. Bar No. 88065
Division of Legislative Audit
172 State Capitol
Little Rock, AR 72201
(501) 683-8600

CERTIFICATE OF SERVICE

I, D. Franklin Arey, III, counsel for Defendant, Roger A. Norman, Legislative Auditor, hereby certify that a true and correct copy of the foregoing Motion to Dismiss has been served on opposing counsel this 30th day of November, 2011, by regular mail addressed to Richard L. Ramsay, Esq., at Eichenbaum, Liles & Heister, P.A., 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201-

3736

D. Franklin Arey, III
Attorney for Defendant