

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

**DAVID B. SHOAR, in his official capacity as the
Sheriff of St. Johns County, Florida,**

Petitioner,

vs.

SBA CASE NO. 2018-0389

**STATE BOARD OF ADMINISTRATION
OF FLORIDA,**

Respondent.

FINAL ORDER DISMISSING PETITION WITH PREJUDICE

On August 13, 2020, the State Board of Administration (SBA) received a petition for administrative hearing from Petitioner, David. B. Shoar (Petition). The Petition challenges the SBA's letter to the Petitioner advising that Petitioner does not have an interest in or the ability to receive the Florida Retirement System (FRS) retirement monies of his former employee, FRS Investment Plan member, Raye A. Brutnell. The Petition fails to demonstrate substantial interest standing. Because Petitioner cannot cure this defect, the Petition is dismissed with prejudice. See § 120.569, Fla. Stat.

No Standing

A petition for administrative hearing must explain how a petitioner's substantial interests are affected by a SBA action. Fla. Admin. Code R. 28-106.201(2)(b). To make this demonstration, the petition must show that (1) the Petitioner will suffer injury in fact which is of sufficient immediacy to entitle him to a hearing under Section 120.569, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, (injury in fact) and (2) the injury is of a type or nature which the administrative proceeding is designed to protect (zone of interest). See, e.g., Agrico Chem. Co. v. Dep't of Env'tl.

Reg., 406 So. 2d 478 (Fla. 2d DCA 1981). The injuries alleged in the Petition are not of the type or nature that the requested administrative proceeding is designed to protect.

The Florida Retirement System Act, as set forth in Chapter 121, Florida Statutes, provides retirement benefits to certain state and local employees. Pursuant to Section 121.011(3)(d), Florida Statutes, the rights of the members of the FRS are “of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.” Furthermore, Section 121.591, provides that “benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee’s principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimus distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.” Section 121.591(5), Florida Statutes, also provides that FRS benefits are payable to “any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not subject to assignment, execution, attachment or any legal process.”¹ The inability of a legal process to affect a member’s retirement benefit is also an Internal Revenue Code requirement, and the FRS’s failure to comply could subject it to losing its qualified plan status potentially affecting millions of FRS members. 26 U.S.C. § 401(a)(13).

Petitioner alleges that he has a substantial interest in his former employee’s FRS retirement benefit for two reasons: (i) as the member’s former employer, he paid contributions on the

¹ While there are enumerated statutory exceptions to this requirement, they do not apply to the issue at hand.

member's behalf to the FRS, and (ii) a court has entered a judgment awarding Petitioner a constructive trust and equitable lien over the member's property and accounts, including the member's retirement accounts. However, this reasoning is without merit. Employers do not retain a right to a member's retirement benefit simply because they paid statutorily required contributions to the retirement system, and FRS retirement benefits are federally and statutorily prohibited from being subject to legal process and are therefore not affected by the court judgment.

As FRS member rights are contractual between the member and the state and are statutorily prohibited from being subject to legal process, the Petitioner's alleged injuries are outside of the zone of interest that an administrative review is designed to protect and the Petition must be dismissed.

DONE AND ORDERED:

Petitioner's August 13, 2020, Petition for Formal Administrative Proceeding and Hearing is DISMISSED with prejudice. This order constitutes final agency action of the SBA.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the State Board of Administration of Florida, Office of General Counsel, 1801 Hermitage Blvd., Ste. 100, Tallahassee, FL 32308, and by filing a copy of the notice of appeal accompanied by the applicable filing fee with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the SBA.

DONE AND ORDERED this 26 day of August, 2020, in Tallahassee, Florida.

**STATE BOARD OF ADMINISTRATION
OF FLORIDA**



Daniel Beard
Chief of Defined Contributions Programs
State Board of Administration
1801 Hermitage Blvd., Ste. 100
Tallahassee, Florida 32308
(850) 488-4406

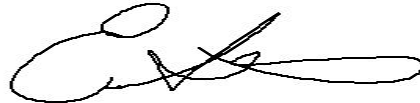
FILED ON THIS DATE PURSUANT TO SECTION
120.52, FLORIDA STATUTES, WITH THE
DESIGNATED DEPARTMENT CLERK, RECEIPT
OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent to Thomas P. White, Esq., Adams and Reese, LLP, 501 Riverside Avenue, Suite 601, Jacksonville, FL 32202, Tom.White@arlaw.com, by electronic mail on this 26 day of August, 2020.



Elizabeth R. Stevens
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard, Ste. 100
Tallahassee, FL 32308