

**Atwell & Atwell**  
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70 S. Constitution Drive, Suite 100  
Aurora, Illinois 60506

Charles H. Atwell  
Charles H. Atwell, Sr.  
(1904-1992)

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September 27, 2019

**Via E-Mail: Carla.huffman@illinoiscomptroller.gov**

Ms. Carla Huffman, Manager  
Office of the Comptroller  
325 West Adams Street  
Springfield, IL 62704

Original documents are being sent UPS  
on an even date herewith.

Re: East St. Louis Police Pension Fund's "Statement of Notification" of  
a claim eligible to be remitted pursuant to 40 ILCS 5/3-125 (c) and  
74 Ill. Adm. Code 295, *et seq.*

Ms. Huffman:

The undersigned is legal counsel for the Board of Trustees of the East St. Louis Police Pension Fund ("Pension Board"). This correspondence serves as the Pension Board's "Statement of Notification" of a claim eligible to be remitted pursuant to 40 ILCS 5/3-125(c) and 74 Ill. Adm. Code 295, *et seq.* The following information is provided pursuant to 74 Ill. Adm. Code 295.300.

Attached are the completed required Comptroller's forms:

1. Statement of Notification (Form C-33p), and
2. Pension Fund Collection Authorization (Form SC0-501p)

**Terms Defined:**

1. **Claimant:** City of East St Louis Police Pension Fund
2. **Chief Executive Officer:** Nicholas Mueller - Pension Board President
3. **Person:** City of East St. Louis ("the City")

**Statement of Notification Information Pursuant to 74 Ill. Adm. Code 295.300(c):**

1. **The name and FEIN or Government Unit Code for the person against whom the claim exists:**  

City of East St. Louis, Illinois  
FEIN: 37-6001941
2. **The certified amount delinquent then due and payable to the fund: \$1,789,255.**

3. **The reasons why there is an amount due to the fund:** There is an amount due to the Pension Fund because the City failed to contribute the statutory minimum, Annual Actuarial Requirement ("AAR") to the Pension Fund for fiscal years 2017 and 2018 as required by 40 ILCS 5/3-125 (a) and (b) of the Pension Code. The City of East St. Louis has chronically underfunded the East St. Louis Police Pension Fund. According to the Illinois Department of Insurance's Actuarial Valuation Report for the East St. Louis Police Pension Fund as of January 1, 2018, the Pension Fund is only 35% funded. (Bd.Exh.5, p.66).<sup>1</sup>

According to a response from the City of East St. Louis to a FOIA request, the City has not done a private actuarial valuation report for fiscal years ending 2015, 2016 and 2017 for the Pension Fund. (Bd.Exh.6, p.69, Bd.Exh.7, p.71 and Bd.Exh.9, p.88).

Since at least 2016, the Pension Fund has engaged the services of an independent enrolled actuary, Jason Franken of Foster and Foster, to determine an actuarial valuation for the East St. Louis Police Pension Fund. (Bd.Exh.3, p.9, Bd.Exh.12, p.126 and Bd.Exh.11, p.95). The Pension Fund forwards a copy of that independent actuarial valuation report to the City, recommending a required municipal contribution to the Pension Fund, as required by §3-143 of the Pension Code. (Bd.Exh.3, p.7, Bd.Exh.12, p.124)

On or about September 21, 2016, the Illinois Department of Insurance issued its Actuarial Valuation Report for the City of East St. Louis Police Pension Fund as of January 1, 2016. (Bd.Exh.1, p.1-2). The Department's recommended statutory minimum for fiscal year 2017 was \$2,045,760. (Bd.Exh.1, p.2).

According to the City of East St. Louis Police Pension Fund's Audited Financial Statement for year ending December 31, 2017, the total amount of contributions to the Pension Fund made by the City during fiscal year 2017 totaled \$714,929, or \$1,330,831 less than the statutory minimum required by §3-125 (a) and (b) of the Pension Code. (Bd.Exh.4, p.48).

On or about August 31, 2017, the Illinois Department of Insurance issued its Actuarial Valuation Report for the City of East St. Louis Police Pension Fund as of January 1, 2017. (Bd.Exh.2, p.4-5). The Department's recommended statutory minimum for fiscal year 2018 was \$2,113,441. (Bd.Exh.2, p.5).

According to the City of East St. Louis Police Pension Fund's Audited Financial Statement for year ending December 31, 2018, the total amount of contributions to the Pension Fund made by the City during fiscal year 2018 totaled \$1,655,017, or \$458,424 less than the statutory minimum required by §3-125 (a) and (b) of the Pension Code. (Bd.Exh.13, p.170).

4. **The time period to which the claim is attributable:** For fiscal years 2017 and 2018. The Pension Fund's fiscal year begins on January 1 and ends on December 31 of each year.
5. **A description of the type of notification given to the person against whom the claim exists and the type of opportunity to be heard afforded that person:** Written notice was served upon the City attorney and Mayor on September 11, 2019. (Bd.Exh.14, p.186), notifying the City of a hearing scheduled for September 26, 2019 for

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<sup>1</sup>References are to exhibits attached hereto and incorporated herein by reference.



purposes of determining whether the Pension Board should file an "intercept" claim with the Comptroller's office.<sup>2</sup>

6. **A statement as to the outcome of any hearings or other proceedings held to establish the claim, or a statement that no hearing was requested:** A hearing was held before the Pension Board on September 26, 2019 pursuant to proper and timely notice. The City appeared through its representatives, as follows: Mayor Robert Eastern, III, City Manager Brooke Smith, City Clerk Debra Tidwell, City Board Administrator Dorene Hooseman and City Corporate Counsel John Baricevic. The City acknowledged receipt of the notice of hearing and exhibits #1-14, which are attached hereto and incorporated herein. The City raised no objection to admission of said exhibits into evidence without the need of further authentication, foundation or live testimony. The City did not contest the delinquent amount of \$1,789,255 as certified by the Board. The Pension Board certified said delinquency and authorized the Board President and counsel to execute any and all documents or forms as may be required and to file said claim with the Comptroller's Office. (A copy of the September 26, 2019 Hearing Transcript is attached hereto as Bd.Exh.15)

7. **The date of the final determination of the claim:** September 26, 2019.

The claimant submits this Statement of Notification to the Comptroller and it requests that the Comptroller deduct and remit to the Pension Fund the certified amount from the total amount of any payments of State funds to the City of East St. Louis in accordance with 40 ILCS 5/3-125 *et seq.* including but not limited to subsection (c) thereof and any and all rules and procedures of the Comptroller's Office including, but not limited to: 74 Ill. Adm. Code 295.400 through 295.700. A copy of the Notification of Claim letter to the Mayor is also included herein.

The Pension Board thanks the Comptroller for its attention to this matter. Please feel free to contact the Pension Board's special counsel, Charles H. Atwell of Atwell and Atwell Law Offices, with any questions or concerns regarding this Statement of Notification.

Sincerely,



Charles H. Atwell

pjs  
Enclosures

cc: Bill English (Via E-mail: bill.english@illinoiscomptroller.gov) with enclosures  
Mr. Nicholas Mueller President, East St. Louis Police Pension Board (Via E-mail: nmuellder@eslpc.com) with enclosures  
Mr. Dennis Orsey, Esq. (Via E-mail: orseylaw2@msn.com) with enclosures  
Mr. John Baricevic, Esq. (Via E-mail: john@chathamlaw.org) with enclosures

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<sup>2</sup>See also correspondence (e-mail) dated September 11, 2017@4:45 p.m. attaching thereto a copy of the "Notice of Hearing" along with a "FOIA Request." Said e-mail correspondence was sent from Board Special Counsel, Attorney Charles H. Atwell to the attention of Debra Hamilton Tidwell with a "cc" to Robert Eastern III, John Baricevic, Willie D. Arnold; Nicolas Mueller, Dennis Orsey and Brad L. Badgley. At hearing on September 26, 2019, City Corporate Counsel, John Baricevic, acknowledged receipt of notice and exhibits. (Bd.Exh.15, p.194)



STATE OF ILLINOIS  
COMPTROLLER  
SUSANA A. MENDOZA

# Pension Fund Collection Request Statement of Notification

Collections Unit  
325 West Adams  
Springfield Illinois 62704

East St. Louis Police Pension Fund  
Requesting Pension Fund  
P.O. Box 607

Address  
East St. Louis, IL 62202

Charles H. Atwell, Attorney

Contact Name and Email Address  
Charles@atwellandattwellaw.com

RE: City of East St. Louis  
(Governmental Entity Name)

COMPTROLLER USE ONLY

Section 5/3-125(c) of the Illinois Pension Code.

To Office of the Comptroller, Collections Unit:

In accordance with the requirements of State or Federal law, please withhold payment from the Governmental Entity.  
Details of this claim are as follows:

FEIN/GUC Number(s)  
(List all known numbers)  
37-6001941

IOC USE ONLY

Entity ID Number

## Time Period During Which Debt Was Incurred

01 / 01 / 2017  
MONTH / DAY / YEAR  
Date From

12 / 31 / 2018  
MONTH / DAY / YEAR  
Date To

\$ 1,789,255.00  
Original Claim Amount

Reason For Debt: Please attach a statement as to why there is an amount due to the Fund.

## PROCEDURAL REQUIREMENTS

Notification Type 0 2 +04 Statement of Outcome 0 2

Type of Hearing Offered 0 1 Date of Final Determination of Debt 09 / 26 / 2019  
MONTH / DAY / YEAR

If I am submitting a facsimile or email signature, I hereby certify by so filing that the original signed document exists in my possession.

X [Signature] President  
AUTHORIZED SIGNATURE TITLE

X 09/26/2019  
DATE  
(618) 482-6696 (work)  
(618) 781-7863 (cell)  
TELEPHONE NUMBER

Process Date



STATE OF ILLINOIS  
COMPTROLLER  
SUSANA A. MENDOZA

## PENSION FUND COLLECTION

User Authorization

### INSTRUCTIONS

In order to submit claims for collection to the Illinois Office of the Comptroller (IOC), Pension Funds must complete this User Authorization form and return to IOC.

Field	Pension Fund
Entity Name	Pension Fund Name East St. Louis Police
Department	Division Name
Entity ID	5-digit Entity ID
Chief Officer	Chief Executive Officer Nicholas Mueller

### CLAIMING ENTITY

PENSION FUND NAME:  
(30 characters maximum) East St. Louis Police

DEPARTMENT:  
(30 characters maximum)

ENTITY ID:  
(If Known)

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CHIEF EXECUTIVE OFFICER NAME: Nicholas Mueller, President

CHIEF EXECUTIVE OFFICER EMAIL: nmuellet@eslpd.com

### AUTHORIZING SIGNATURE

The Authorized Signature of the Chief Executive Officer below will be kept on file for use as a certifying signature for each debt submitted to the Illinois Office of the Comptroller.

Date 09 / 26 / 19

## Charles Atwell

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**From:** Charles Atwell  
**Sent:** Wednesday, September 11, 2019 4:55 PM  
**To:** Debra Hamilton Tidwell  
**Cc:** Robert Eastern III ; John Baricevic; Willie D. Arnold; Nicholas Mueller; Dennis Orsey; Brad L. Badgley  
**Subject:** RE: Freedom of Information Act – Request for Documents  
**Attachments:** East St. Louis FOIA Request Letter - 9-11-19.pdf; East St. Louis - Notice of Hearing.pdf

Ms. Tidwell,

Please find attached a FOIA Request and Notice of Hearing.

Thank you.

Charles H. Atwell  
Atwell & Atwell Law Offices  
70 S. Constitution Drive, Suite 100  
Aurora, IL 60506  
(630) 892-4341  
(630) 892-4399 (Fax)

**CONFIDENTIALITY NOTICE:** This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you received this e-mail in error, please notify the sender by reply transmission immediately and delete the message from your system. Thank you.

**Atwell & Atwell**  
Attorneys and Counselors at Law  
70 S. Constitution Drive, Suite 100  
Aurora, Illinois 60506

Charles H. Atwell  
Charles H. Atwell, Sr.  
(1904-1992)

Phone: (630) 892-4341  
Fax: (630) 892-4399  
E-Mail: Charles@atwellandattwellllaw.com

September 11, 2019

**Via E-mail: DTidwell@cesl.us**

City of East St. Louis and Willie D. Arnold, City Treasurer  
%Debra Hamilton Tidwell, City Clerk/FOIA Officer  
301 River Park Drive  
East St. Louis, IL 62201

Re: Freedom of Information Act – Request for Documents

Ms. Tidwell:

Please consider this letter an Illinois Freedom of Information Act (“FOIA”) request to the City of East St. Louis. On September 3, 2019, you provided the City’s response to my August 29, 2019 FOIA request, submitted on behalf of the Board of Trustees of the East St. Louis Police Pension Fund. Said response does not appear to identify, specifically, all monies collected from any and all sources for the benefit of the East St. Louis Police Pension Fund for the calendar years 2017 and 2018. Nor does said response appear to identify all monies paid or transferred by the City of East St. Louis to or on account of the East St. Louis Police Pension Fund, from any and all sources (as required by 40 ILCS 5/3-125) for the years 2017 and 2018.

Pursuant to the above paragraph, please provide the following for the calendar years 2017, 2018 and January 1, 2019, through and inclusive of the present date:

1. All records/documents identifying all monies collected (from any source) by the City of East St. Louis designated for Police Pension Fund;
2. All records/documents identifying any and all payments made by the City of East St. Louis to or on account of the East St. Louis Police Pension Fund from any source, the same representing compliance with any tax levy request submitted by the East St. Louis Police Pension Fund Board; and
3. Copies of any and all actuarial valuations provided by the State or certified actuaries which the City may have relied upon for funding of the East St. Louis Police Pension Fund for the aforementioned years.

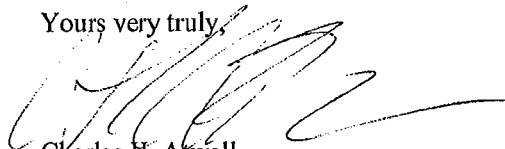
Again, we are asking that you, as the City Clerk, certify that the documents provided in reply to this FOIA, are true and accurate.

Please also note that the aforementioned information must be provided within the five (5) day period required by the Freedom of Information Act.

In a separate correspondence, the municipality shall be provided a "Notice of Hearing" scheduled for September 26 , 2019 at 12:00 p.m. before the Board of Trustees of the East St. Louis Police Pension Fund. The purpose of this hearing shall be to determine whether or not the municipality has complied with the funding requirements of statute. You are further notified that the Board may issue a subpoena requesting the presence of Willie D. Arnold, as City Treasurer and/or yourself, as City Clerk, to present testimony before the Board, at hearing.

Your prompt attention to this matter is greatly appreciated.

Yours very truly,



Charles H. Atwell  
Special Counsel to the Board of  
Trustees of the East St. Louis Police  
Pension Fund

pjs

cc: Mayor Robert Eastern, III (Via E-mail: reastern@cesl.us)  
John Baricevic, City Attorney (Via E-mail: john@chathamlaw.org)  
Willie D. Arnold, City Treasurer (Via E-mail: warnold@cesl.us)  
Board of Trustees of the East St. Louis Police Pension Fund (Via E-mail: nmueeller@eslpd.com)  
Dennis Orsey, Police Pension Board Attorney (Via E-mail: orseylaw2@msn.com)  
Brad L. Badgley, Board's Special Local Counsel (Via E-mail bbadg@aol.com)



**BOARD OF TRUSTEES OF THE  
EAST ST. LOUIS POLICE PENSION FUND**

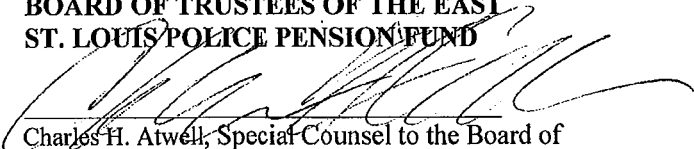
IN THE MATTER OF THE INTERCEPT       )  
OF PENSION FUNDS FROM :                    )  
  )  
CITY OF EAST ST. LOUIS                      )

**NOTICE OF HEARING**

To: Mayor Robert Eastern, III	Willie D. Arnold, City Treasurer	Debra Hamilton Tidwell, City Clerk
City of East St. Louis	City of East St. Louis	City of East St. Louis
301 River Park Drive	301 River Park Drive	301 River Park Drive
East St. Louis, IL 62201	East St. Louis, IL 62201	East St. Louis, IL 62201

**YOU ARE HEREBY NOTIFIED** that on the **26th day of September 2019** at **12:00 p.m.**, a public hearing will be held before the Board of Trustees of the East St. Louis Police Pension Fund in the City Council Chambers at the East St. Louis City Hall, 301 River Park Dr., East St. Louis, Illinois 62201, to determine the following: whether or not the municipality has failed to comply with the funding requirements as set forth in Section 3-125 of the Police Pension Code (40 ILCS 5/3-125), over the past years, including but not limited to: calendar years 2017, 2018, and January 1, 2019, through and inclusive of the present date. In the event it is determined that the municipality is, in fact, deficient in its funding requirements per statute, the Pension Board shall immediately certify said results to the attention of the State Comptroller to exercise its rights (intercept) pursuant to 40 ILCS 5/3-125(c) and (d).

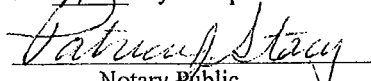
**BOARD OF TRUSTEES OF THE EAST  
ST. LOUIS POLICE PENSION FUND**

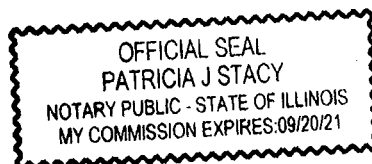
  
Charles H. Atwell, Special Counsel to the Board of  
Trustees of the East St. Louis Police Pension Fund  
Atwell & Atwell Law Offices  
70 S. Constitution Drive, Suite 100  
Aurora, IL 60506  
(630) 892-4341

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing Notice of Hearing was served upon the parties to whom it is directed, by depositing said envelopes with postage fully prepaid in a U.S. Post Office mailbox before 6:00 p.m. in Aurora, Illinois, on the 11th day of September 2019.

Subscribed and sworn to before me  
this 11th day of September 2019.

  
Notary Public



**Atwell & Atwell**  
Attorneys and Counselors at Law  
70 S. Constitution Drive, Suite 100  
Aurora, Illinois 60506

Charles H. Atwell  
Charles H. Atwell, Sr.  
(1904-1992)

Phone: (630) 892-4341  
Fax: (630) 892-4399  
E-Mail: Charles@atwellandatwellllaw.com

September 27, 2019

**Via Certified Mail 7012-3050-0001-0090-7070**  
**Return Receipt Requested**

Honorable Robert Eastern III, Mayor  
City of East St. Louis  
301 River Park Drive  
East St. Louis, Illinois 62201

Re: Notice of the East St. Louis Police Pension Fund's intent to pursue  
intercept of payments of State funds to the City of East St. Louis  
pursuant to 40 ILCS 5/3-125 (c)

Mayor Eastern:

You are aware that the undersigned is special legal counsel for the Board of Trustees of the East St. Louis Police Pension Fund ("Pension Board"). This correspondence serves as the Pension Board's notice to the City of East St. Louis ("City") pursuant to 40 ILCS 5/3-125(c) that the Pension Board shall be submitting a Statement of Notification to the State of Illinois Comptroller certifying the amount of the City's delinquent contributions owed to the City of East St. Louis Police Pension Fund for fiscal years 2017 and 2018 in the total amount of \$1,789,255,00, and seeking the intercept of payments of State funds to the City in order to satisfy said delinquency.

Should you have any questions or concerns in this matter, please do not hesitate to contact the undersigned.

Sincerely,



Charles H. Atwell

pjs

cc: Mr. Nicholas Mueller President, East St. Louis Police Pension Board (Via E-mail:  
nmueller@eslpc.com)  
Mr. Dennis Orsey, Esq. (Via E-mail: orseylaw2@msn.com)  
Mr. John Baricevik, Esq. (Via E-mail: john@chathamllaw.org)