

# **Agenda Item IV.**

## **Executive Director's Report**

### **G. Confirmation of Settlement *(Patricia Davis)***

# Public Employees' Retirement Board

March 8, 2012

## Topic: Nielsen Settlement Agreement

Approve reimbursement of mileage expenses for retired member David L. Nielsen in the amount of \$170.94 out of the administrative fund. Ms. Davis and Ms. Symons agree to reimburse Mr. Nielsen's travel expenses due to his reliance on miss information from staff as well as the public attention he received after having to rescind acceptance of the position.

See MPERA letter dated January 11, 2012 and Nielsen letter dated 1/8/2011  
Also see email dated 2/29/2012 in which Mr. Nielsen waived his right to privacy.

### Recommended Board motion:

Approve recommended reimbursement request.

Recommend \_\_\_\_\_

\_\_\_\_\_  
Moved by

\_\_\_\_\_  
Seconded by

\_\_\_\_\_  
Vote

**Davis, Patty (MPERA)**

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**From:** David Nielsen [d.nielsen@bresnan.net]  
**Sent:** Wednesday, February 29, 2012 11:33 AM  
**To:** Davis, Patty (MPERA)  
**Subject:** Re: Nielsen settlement

That will work better in case I cannot stay. I can have my spouse attend for me.

DLN

**From:** Davis, Patty (MPERA)  
**Sent:** Tuesday, February 28, 2012 12:39 PM  
**To:** 'David Nielsen'  
**Subject:** RE: Nielsen settlement

If you waive your rights to privacy, we will schedule your issue will be addressed at approximately 10:00. Please keep in mind that this is just an approximation of when the item will be discussed. I hope that helps your planning processes. Let me know if you have any questions.

Thanks.

*Patricia Davis*  
*Member Services Bureau Chief*  
*Montana Public Employees Retirement Administration*  
*406-444-5449*  
*[pjdavis@mt.gov](mailto:pjdavis@mt.gov)*

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**From:** David Nielsen [<mailto:d.nielsen@bresnan.net>]  
**Sent:** Tuesday, February 28, 2012 11:31 AM  
**To:** Davis, Patty (MPERA)  
**Subject:** Re: Nielsen settlement

I may not be in Helena on March 8th, depending upon the time of day. Since the decision involves my privacy rights, I waive those rights and consent to it being open to the public. Thanks.

David L. Nielsen  
**From:** Davis, Patty (MPERA)  
**Sent:** Monday, February 27, 2012 12:22 PM  
**To:** 'David Nielsen'  
**Subject:** RE: Nielsen settlement

To: Patty Davis

From: David L. Nielsen 

Date: 1/8/2012

Re: Kalispell Interim City manager Position

After being advised twice by PERD personnel, once in late November and again in late December, that as a recent retiree under PERS I could accept a position in Kalispell as its interim city manager, I made arrangements to accept that position, including executing an employment contract and a rental agreement for housing. After arriving in Kalispell on January 4, 2012, to start this new position I was informed by the same PERD personnel that if I accepted the position with Kalispell I would be disqualified from receiving a pension for the next 90 days. This last minute change in position by PAERD was unexpected and professionally embarrassing to me and left the City of Kalispell in the position of having to find another interim manager at the last minute.

I propose the following resolution:

1. That I be reimbursed for my mileage to and from Kalispell using the 2012 mileage rate of 55.5¢ per mile for 308 miles. The total is \$170.94.
2. That a letter be written to the City of Kalispell, its Mayor and Council members, unequivocally confirming that I was previously told twice that I could accept the position without jeopardizing my retirement status and that determination was later reversed by PERD.
3. In the letter ERD apologize to the City of Kalispell for the inconvenience caused by this change in position by PERD.
4. That I am allowed to review the letter prior to mailing and be given a copy of the letter.
5. That the letter be sent no later than January 10, 2012.

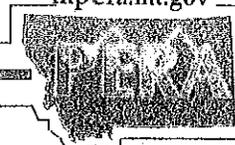
PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



BRIAN SCHWEITZER  
GOVERNOR

mpera.mt.gov

STATE OF MONTANA



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PO BOX 200131  
HELENA, MT 59620-0131

January 11, 2012

Mayor Tammi Fisher  
Kalispell City Council  
City of Kalispell  
PO Box 1997  
Kalispell, MT 59903-1997

Re: David Nielsen

Dear Mayor Fisher and City Council Members:

This letter is to extend an apology to you and Mr. Nielsen for any inconvenience caused to you and the City of Kalispell as a result of the information originally provided to Mr. Nielsen from myself and MPERA staff members that indicated he could accept the interim City manager position in Kalispell without an impact to his PERS retirement benefit.

Although Chief Administrative officers of a city or county are optional members of PERS under section 19-3-412(1)(3), MCA, subsection (7) of the same statute specifies that current PERS members accepting positions declared "optional" under the statute remain active members of the system. Mr. Nielsen would have been a mandatory active member of PERS had he accepted the Interim City Manager position.

Again, I apologize for any problems this issue has caused the city, the council, and Mr. Nielsen. Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Davis".

Patricia Davis

Member Services Bureau Chief

Cc: David Nielsen  
Roxanne Minnehan, Executive Director  
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