



REPLY TO: TALLAHASSEE

October 8, 2013

Ms. Darcee S. Siegel
City Attorney
City of North Miami Beach
City Hall, 4th floor
17011 N.E. 19 Avenue
North Miami Beach, FL 33162-3100

Re: General Employees Retirement Plan – Duty of Retirement Committee to Administer the Plan

Dear Ms. Siegel:

As requested, I have reviewed Bob Sugarman's October 7, 2013 letter to the General Employees Retirement Committee concerning the recent plan changes adopted by the City Council in Ordinance 2013-15. The retirement plan changes, which were agreed to in collective bargaining with AFSCME, included the deletion of language in section 1.05 providing that plan amendments "must be approved by 2/3% of the active participants..."

Based on case law holding that administrative agencies have no power to declare a statute void or otherwise unenforceable, Mr. Sugarman advises the committee to "continue to administer the terms of the current plan (disregarding the amending ordinance because it was not approved by 2/3 of the participants) as you did before the City passed the ordinance until the City Council's amendments are approved by 66-2/3% of the system's active members ... or ... a court rules that the City Council's amendments are valid and enforceable."

In my opinion, the cases cited by Mr. Sugarman support the opposite conclusion: the Retirement Committee is required to administer the retirement plan in accordance with plan as amended by the City Council, unless and until a court rules otherwise.

See Things Differently

BRADENTON
101 Riverfront Boulevard
Suite 620
Bradenton, Florida 34205

p | 941-708-4040 • f | 941-708-4024

JACKSONVILLE
245 Riverside Avenue
Suite 150
Jacksonville, Florida 32202

p | 904-353-6410 • f | 904-353-7619

TALLAHASSEE
315 South Calhoun Street
Suite 630
Tallahassee, Florida 32301

p | 850-222-5702 • f | 850-224-9242

WEST PALM BEACH
515 North Flagler Drive
Suite 1500
West Palm Beach, Florida 33401

p | 561-640-0920 • f | 561-640-8202

www.llw-law.com

Ms. Darcee S. Siegel
October 8, 2013
Page 2

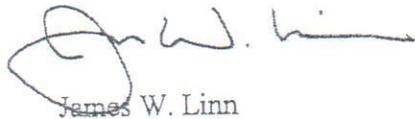
As stated in Mr. Sugarman's letter, Florida courts have concluded in a number of cases that administrative agencies have no power to declare a statute void or otherwise unenforceable; and that only the courts have the power to declare a law to be unconstitutional. An agency must assume that a law is constitutional until a court declares otherwise.

Thus, based on the cases cited by Mr. Sugarman, the Retirement Committee must administer and enforce the retirement plan in accordance with the ordinance establishing the plan, as amended by the City Council. The Committee has no authority to refuse to implement the provisions of the plan as amended by Ordinance 2013-15 simply because committee members or their attorneys may believe the ordinance is invalid or unconstitutional. The committee must assume that the plan as amended by Ordinance 2013-15 is constitutional until a court declares otherwise.

Simply put: the provision requiring plan amendments to be approved by 2/3 of active plan members was deleted by Ordinance 2013-15. Unless and until a court determines that ordinance 2013-15 is unconstitutional or otherwise invalid, the Retirement Committee must administer the plan in accordance with that ordinance.

If you have questions concerning these matters, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Linn". The signature is fluid and cursive, with a large loop at the beginning.

James W. Linn

JWL/es