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October 28, 2009

Board of Trustees
North Miami Beach Police Officers' & Firefighters' Retirement Plan
c/o Marty Lebowitz, Pension Coordinator
17011 N.E. 19th Avenue
N. Miami Beach, Florida 33162-3194

*Re: City of North Miami Beach Police & Firefighters' Retirement System -
Bankruptcy of Municipalities*

Dear Trustees:

You have requested our opinion concerning the availability of bankruptcy to Florida municipalities and any potential repercussions facing pensioners as a result thereof. It is important to note that under Florida law, a Florida municipality cannot declare bankruptcy without the prior approval of the Governor. The Governor is given extraordinary powers to essentially take control of a city's finances if it cannot meet its obligations so as to avoid the need for bankruptcy. Furthermore, even if bankruptcy is permitted by the governor, the laws require a comprehensive reorganization plan that must be approved by the court and must account for all pension obligations.

It is our understanding that a number of City of North Miami Beach retirees have raised concerns regarding a statement made during the September 8th Special City Council Meeting concerning "bouncing pension checks" should the City declare bankruptcy. We have reviewed the audio/video recording of the September 8 Special Meeting found at the City of North Miami Beach website. At that meeting, it was stated that, essentially, cities in Florida have the option of declaring bankruptcy, "bouncing" pension checks, and avoiding "all liability" for pensions because of bankruptcy protection. For the reasons stated below, we respectfully disagree with that statement.

A Florida municipality does not have the option of unilaterally declaring bankruptcy. Bankruptcy cannot occur without prior approval of the Governor. Section 218, Florida Statutes, provides for the procedures to be followed when a city has a "financial emergency." See Fla.

Stat. §218.503 (2009). It defines the conditions when a financial emergency occurs. One of those conditions when a city fails to timely pay either the pension contributions due to its pension plans the retirement benefits due to retirees. See §218.503(1)(c)(2)(b) and §218.503(1)(d)(2). Other conditions include failure to pay within the same fiscal year short-term loans, bond debt service, or other long-term debt payments. See §218.503(1)(a).

Should such conditions exist, the statute provides for assistance from the state government to resolve the emergency. One such measure afforded to resolve the financial emergency includes authorization for the state to loan money to a city. See §218.503(3)(b). Other measures include:

- *Requiring approval of the local government entity's budget by the Governor*
- *Prohibiting the entity from issuing bonds, notes, or any other form of debt*
- *Consulting with auditors of the local entity and appropriate state officials regarding necessary steps to bring the books and accounting systems into compliance with state requirements*

See §218.503(3). Florida law clearly contemplates that if an emergency exists, the state government will first work with a municipality to fulfill that city's financial obligations.¹ It also permits the Governor to appoint an oversight commission to essentially take control of the city's finances.

The same statute expressly prohibits a local government entity from declaring bankruptcy "except with a prior approval of the Governor." Accordingly, the City has no authority or "option" to, on its own, declare bankruptcy as suggested on September 8. Governors generally use the extraordinary powers granted to them to take control of a city's finances rather than permitting bankruptcy. Nevertheless, even if the Governor approved a municipal bankruptcy, the section of the bankruptcy code governing municipalities does not allow for a city to extinguish pension obligations by liquidating its assets. Under that section of the bankruptcy code, a city may reorganize its debts pursuant to a court approved plan of reorganization.

¹ We are unable, unfortunately, to provide you with further analysis of the financial emergency statute. There is no reported decision from a Florida court, in the context of a city's financial emergency, that interprets the statutory provisions on either: 1) retirement benefits payable to former employees; 2) measures to remedy a financial emergency; or 3) the Governor's approval of a municipal bankruptcy. Moreover, there is no Attorney General's Opinion or Florida Administrative Code regulation which further articulates this statute.

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It is therefore our opinion that the City does not have the authority to unilaterally declare bankruptcy and that even in the unlikely event that bankruptcy was authorized by the Governor, the bankruptcy code does not allow the City to stop paying pensions or to refuse to honor the pension checks sent to retirees.

Yours truly,



ROBERT A. SUGARMAN
D. MARCUS BRASWELL, JR.

RAS/jd

Enclosure