




To: Mr. Keith Brinkman

From: James W. Linn

Approved: Craig Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Retirement Plan – Composition Of Pension Board

Date: October 28, 2013

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We represent the City of Coral Gables in pension matters. The City's retirement plan, which includes firefighters, police officers and general employees, was originally created pursuant to a special act of the legislature enacted before May 27, 1939. A copy of the 1939 special act is enclosed.

Sections 175.351(2) and 185.35(2), Florida Statutes, were amended in 2011 to state: "Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter." See Ch. 2011-216, Laws of Florida. The date in the preceding sentence was amended specifically to include the 1939 special act creating the Coral Gables retirement plan.

The city is considering an amendment to its retirement plan that would change the composition of the pension board. Under the current plan, the pension board is made up of nine members as follows: four employee representatives elected by employees (including one firefighter member elected by firefighters and one police officer elected by police officers); and five citizens appointed by the City Commission. The city is considering an amendment that would provide for a thirteen member pension board as follows: four employee representatives elected by employees; five citizens appointed by the City Commission; two members recommended by the City Manager and approved by the City Commission; and the City Finance Director and Human Resources Director in their official capacities. The amendment would not change the existing plan provisions concerning the police officer and firefighter members of the pension board - these two members would continue to be elected by police officer and firefighter members as they are now.

The City has asked whether the amendment described above would violate any provision of Chapters 175 and 185, or in any way jeopardize the City's eligibility to receive future premium tax disbursements.

Sections 175.061(1)(a) and 185.05(1)(a) generally provide for a five member pension board, with two members appointed by the city's legislative body, two members elected by police officers and firefighters, and a fifth member chosen by a majority of the other four members. Sections 175.061(1)(b) and 185.05(1)(b) contain certain grandfather provisions for pension boards operating local law plans on June 30, 1986 and July 1, 1999. The question is whether the "deemed to comply" provision in sections 175.351(2) and 185.35(2) takes precedence over the pension board composition provisions of sections 175.061(1)(a) and 185.05(1)(a).

The Division of Retirement has taken a broad view of the "deemed to comply" provision in Chapters 175 and 185. For example, last year the Division opined that the City of Jacksonville a city with a "deemed to comply" police and fire pension plan -- could revise the composition of the pension board in a manner different than provided in Chapters 175 and 185, without violating those Chapters. The City of Jacksonville amendment would have allowed the City to select three members of the five member board. In a letter dated June 29, 2012, you stated that the change in composition of the pension board would not jeopardize the city's eligibility for premium tax moneys under Chapters 175 and 185. On March 25, 2013 you indicated that the City of Miami another city with a "deemed to comply" police and fire pension plan, could establish a defined contribution plan for new hires without violating chapters 175 and 185. Based on the Miami plan's "deemed to comply" status, the city could establish a completely different type of retirement plan than the defined benefit plan required by Chapters 175 and 185, without losing eligibility for premium tax moneys. As you noted in your letter of June 29, 2012: "We agree that the provisions found in sections 175.351 (2) and 185.35(2), Florida Statutes, which state that local law plans created by special act before May 27, 1939 are deemed to comply with this chapter, appear to provide great deference to such plans."

Based on well established Florida case law, the specific exemption provided by the legislature in sections 175.351(2) and 185.35(2) takes precedence over the more general provisions of sections 175.061(1)(a) and 185.05(1)(a). Moreover, it also is well settled that when two statutes are in conflict, the more recently enacted statute controls the older statute. For these reasons a plan that is "deemed to comply" with Chapters 175 and 185 may vary the pension board composition provisions of sections 175.061(1) and 185.05(1) without violating Chapters 175 and 185 or jeopardizing the plan's eligibility to receive future premium tax disbursements.

It is well settled that where two statutory provisions are in conflict, the specific statute controls the general statute. *See, e.g., Palm Beach County Canvassing Bd. V. Harris*, 772 So. 2d 1273 (Fla. 2000); *State ex rel. Johnson v. Vizzini*, 227 So.2d 205 (Fla.1969). In the present situation,

sections 175.061(1) and 185.05(1) generally address the composition, selection and terms of pension board members. In contrast, sections 175.351 (2) and 185.35(2) specifically provide that "local law plans created by special act before May 27, 1939 *shall be deemed to comply with this chapter.*" Based on the specific language in sections 175.351 (2) and 185.35(2) stating that plans created by special act before May 27, 1939 are "deemed to comply" with Chapters 175 and 185, including sections 175.061(1) and 185.05(1), the specific "deemed to comply" provision controls over the more general provisions of sections 175.061(1) and 185.05(1).

Based on the Division of Retirement's broad application of the "deemed to comply" exemption in other cases and the cases cited above, a local law plan that is "deemed to comply" with Chapters 175 and 185 pursuant to sections 175.351 (2) and 185.35(2) may vary the pension board composition provisions of sections 175.061(1) and 185.05(1) without violating Chapters 175 and 185 or jeopardizing the plan's eligibility to receive future premium tax disbursements. The City of Coral Gables asks that you confirm this interpretation.

## Hernandez, Cristina

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**From:** Leen, Craig  
**Sent:** Monday, October 28, 2013 8:43 AM  
**To:** Hernandez, Cristina  
**Subject:** FW: Coral Gables Retirement Plan - Composition of Pension Board  
**Attachments:** DOC003.pdf; Linn.coral gables ltr.10.25.13.pdf

Please print out both attached letters and put together in the opinion folder.

Craig E. Leen  
City Attorney

-----Original Message-----

**From:** Brinkman, Keith [<mailto:Keith.Brinkman@dms.myflorida.com>]  
**Sent:** Friday, October 25, 2013 3:31 PM  
**To:** Jim Linn  
**Cc:** Leen, Craig; [Tommy.Wright@dms.myflorida.com](mailto:Tommy.Wright@dms.myflorida.com); Carr, Sarah; [KHarrison@sugarmansusskind.com](mailto:KHarrison@sugarmansusskind.com)  
**Subject:** RE: Coral Gables Retirement Plan - Composition of Pension Board

Jim,

Please see attached response regarding the City of Coral Gables retirement plan. Hard copy to follow in the mail.

Thanks,  
Keith

-----Original Message-----

**From:** Jim Linn [<mailto:jlinn@llw-law.com>]  
**Sent:** Tuesday, September 17, 2013 11:33 AM  
**To:** Brinkman, Keith  
**Cc:** Craig E. Leen , Esquire  
**Subject:** Coral Gables Retirement Plan - Composition of Pension Board

Hi Keith - a letter concerning a proposed amendment to the Coral Gables Retirement Plan board of trustees is attached. Please call me if you have any questions or wish to discuss. I look forward to your response.

Jim Linn  
Lewis, Longman & Walker, P.A.  
o 850.222.5702  
m 850.443.0086



REPLY TO: TALLAHASSEE

September 17, 2013

Mr. Keith Brinkman, Bureau Chief  
Bureau of Local Retirement Systems, Division of Retirement  
Department of Management Services  
Post Office Box 3010  
Tallahassee, FL 32315-3010

Re: Coral Gables Retirement Plan -- Composition of Pension Board – Plan “Deemed to Comply” with Chapters 175 and 185, Florida Statutes

Dear Keith:

We represent the City of Coral Gables in pension matters. The City’s retirement plan, which includes firefighters, police officers and general employees, was originally created pursuant to a special act of the legislature enacted before May 27, 1939. A copy of the 1939 special act is enclosed.

Sections 175.351(2) and 185.35(2), Florida Statutes, were amended in 2011 to state: “Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter.” See Ch. 2011-216, Laws of Florida. The date in the preceding sentence was amended specifically to include the 1939 special act creating the Coral Gables retirement plan.

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*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 830  
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 | 561-640-0820 • f | 561-640-8202

Mr. Keith Brinkman  
September 17, 2013  
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Resources Director in their official capacities. The amendment would not change the existing plan provisions concerning the police officer and firefighter members of the pension board – these two members would continue to be elected by police officer and firefighter members as they are now.

The City has asked whether the amendment described above would violate any provision of Chapters 175 and 185, or in any way jeopardize the City's eligibility to receive future premium tax disbursements.

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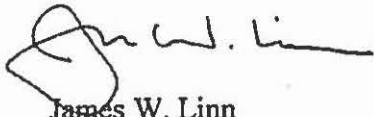
Mr. Keith Brinkman  
September 17, 2013  
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It is well settled that where two statutory provisions are in conflict, the specific statute controls the general statute. *See, e.g., Palm Beach County Canvassing Bd. V. Harris*, 772 So. 2d 1273 (Fla. 2000); *State ex rel. Johnson v. Vizzini*, 227 So.2d 205 (Fla.1969). In the present situation, sections 175.061(1) and 185.05(1) generally address the composition, selection and terms of pension board members. In contrast, sections 175.351(2) and 185.35(2) specifically provide that "local law plans created by special act before May 27, 1939 shall be deemed to comply with this chapter." Based on the specific language in sections 175.351(2) and 185.35(2) stating that plans created by special act before May 27, 1939 are "deemed to comply" with Chapters 175 and 185, including sections 175.061(1) and 185.05(1), the specific "deemed to comply" provision controls over the more general provisions of sections 175.061(1) and 185.05(1).

Based on the Division of Retirement's broad application of the "deemed to comply" exemption in other cases and the cases cited above, a local law plan that is "deemed to comply" with Chapters 175 and 185 pursuant to sections 175.351(2) and 185.35(2) may vary the pension board composition provisions of sections 175.061(1) and 185.05(1) without violating Chapters 175 and 185 or jeopardizing the plan's eligibility to receive future premium tax disbursements. The City of Coral Gables asks that you confirm this interpretation.

Thank you for your attention to this matter. I look forward to your response.

Sincerely,



James W. Linn

cc: Craig Leen, City Attorney

Coral Gables

Chap. 19750  
1939

of the City of Coral Gables, Florida, voting on the same at a general or special election called for such purpose shall vote in favor thereof. Said election shall be held and conducted in substantial conformity with the manner of holding and conducting other elections in said City so far as the same are applicable. The form of ballot to be used at said election shall be prescribed by the City Commission of the said City.

Section 8. This Act and the ordinance herein provided for shall be liberally construed, and if any clause, provision or section hereof or of said ordinance shall for any reason be held invalid, the same shall be eliminated and the remaining portions hereof and thereof shall be and remain in full force and effect as if such invalid clause, provision or section had not been incorporated herein or therein.

Section 4. All laws or parts of laws in conflict herewith be and the same are hereby repealed.

Section 5. This Act shall become a law immediately upon its passage and approval by the Governor, or upon its becoming a law without such approval.

Approved by the Governor May 25, 1939.

Filed in Office Secretary of State, May 26, 1939.

All employees

CHAPTER 19750—(No. 755).

HOUSE BILL NO. 1250

AN ACT To Authorize the City Commission of the City of Coral Gables, Florida, to Establish By Ordinance a Pension, Annuity and Retirement System for Any or All Groups of Officers and Employees in the Service of Said City; to Provide for Disability and Death Benefits; to Provide for Contribution to the Costs Thereof on an Actuarial Basis; Providing for the Manner in Which Officers and/or Employees May Come Under the Operation of Said System; Providing for the Re-Payment to Members Leaving the Service of the City; Providing for the Investment of Funds Created Under Said System; Providing for the Administration of Said System; and Providing for the Submission of Said Ordinance to Referendum of Qualified Voters of Said City; When Said Act Shall Take Effect and Other Matters Relating Thereto.

Chap. 19750  
1939

As Enacted by the Legislature of the State of Florida:

Section 1. The City Commission of the City of Coral Gables shall have authority to establish by ordinance a pension, annuity and retirement system for any or all groups of officers and employees in the service of said City. Any system so established may provide for disability and death benefits. Any such pension and retirement system shall be established on a jointly contributory basis, with the officers and employees bearing that percentage of the cost as may be prescribed by ordinance, except as to prior service charges, which may be borne entirely by the City. The cost of the system shall be determined actuarially on the basis of such mortality and service tables as the Commission shall approve and shall be calculated and contributed as a uniform or decreasing percentage of the payroll of members. No system requiring an increasing percentage of the payroll to be paid as the contribution of either the members or the City shall be established. The provisions of the ordinance establishing such a pension and retirement system shall require periodic actuarial evaluations which shall serve as the basis of any changes in the rates of contributions and shall also provide for the maintenance at all times of adequate reserves. Any officer or employee of the City shall have for a reasonable time, after the establishment of such system and after his or her appointment or employment, the privilege of becoming a member of the system so established and the privilege of sharing its obligations and benefits. Any system established under this Act shall provide that any employee leaving the service of the City for any reason shall receive from the pension fund a sum at least equal to his contribution.

Section 2. All monies paid into any pension or retirement fund created by authority of this Act except such monies as are necessary to meet current operating or pension or retirement payments shall be invested in Bonds of the City of Coral Gables or United States of America Government Bonds.

Section 3. Any Pension and Retirement System established under this Act shall be administered by a Pension Board of seven members. Three of the members of said Board shall be appointed by the City Commission and three of the members of said Board shall be elected by officers and employees of the City who are members of the Pension System at the time of holding said election. The seventh member of the said Board shall be elected by the other six members. In the event the six Board members cannot agree



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1939

upon the seventh member within ten days after the said Board members take office, then the County Judge of Dade County, Florida, shall designate and appoint a seventh member to the said Pension Board. The City Commission shall by resolution designate the term of office of the said members, and the term of office of the members of said Board appointed by the City Commission shall be the same as the term of office of the members of said Board elected by the City employees. Such elections shall be held under such rules as the City Commission shall prescribe by resolution.

Section 4. No ordinance enacted under the provisions of this Act shall become effective until a majority of the qualified voters of the City of Coral Gables, Florida, voting on the same at a general or special election called for such purpose, shall vote in favor thereof. Said election shall be held and conducted in substantial conformity with the manner of holding and conducting other elections in said City, so far as the same is applicable. The form of ballot to be used at said election shall be fixed by the City Commission of the City of Coral Gables, Florida.

Section 5. This Act and the ordinance herein provided for shall be liberally construed and if any clause, provision or section hereof or thereof shall for any reason be held invalid, the same shall be eliminated and the remaining portions hereof and thereof shall be and remain in full force and effect as if such invalid clause, provision or section had not been incorporated herein or therein.

Section 6. All laws and parts of laws in conflict herewith are hereby repealed.

Section 7. This Act shall take effect immediately upon its being signed by the Governor or upon its becoming a law without his signature.

Approved by the Governor May 25, 1939.

Filed in Office Secretary of State May 26, 1939.

CHAPTER 19751—(No. 756).

HOUSE BILL NO. 1907

Chap. 19751  
1939

AN ACT Authorizing and Empowering the City Council of the City of Coronado Beach, Volusia County, Florida, to Make an Accurate Survey of Colin Park and Orlando Beach Subdivisions in Said City; to Adjust and Correct Any Defects or Discrepancies That May Exist By Reason of the Improper Surveying or Laying Out of Said Subdivision; to Record a Corrected Plat or Plats of Said Subdivisions; If Necessary to Close Alter or Open Streets and Change the Size or Location of Lots in Said Subdivisions in Order to Cure Such Defects; to Establish Corner Monuments or Markers; to Assess the Cost of Such Work Against the Various Lots in Said Subdivisions, and for the City of Coronado Beach to Acquire a Lien Therefor; to Enforce Such Liens After They Become Delinquent; and Providing for an Election to Accept or Reject This Act.

WHEREAS, there exist in the City of Coronado Beach, Volusia County, Florida, certain defects and irregularities in the situation and location of the two subdivisions herein described by reason of the fact that said subdivisions were not properly surveyed and laid out on the ground in accordance with the recorded plats thereof, such subdivisions being designated as Colin Park Subdivision as per map in Map Book 1, page 83 of the Volusia County Public Records, and Orlando Beach Subdivision as per map in Map Book 5, page 153 of the Volusia County Public Records; and

WHEREAS, the City of Coronado Beach, a municipal corporation, owns a large portion of the lands and premises in said subdivisions by virtue of its foreclosure of its delinquent tax certificates, and a large number of the owners of property in said subdivisions other than the City of Coronado Beach have requested the said city to correct the overlaps and discrepancies now existing in order that the property may be eligible for a loan by the Federal Housing Administration or individual lending agencies; and

WHEREAS, it is advantageous to the said city and the residents thereof and the owners of property in the above mentioned subdivisions that the existing defects and irregularities be cured, and that permanent monuments or markers be placed throughout said subdivisions and further that an accurate survey be made and a corrected plat or plats be recorded in the Volusia County Public Records; now therefore



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Office of the General Counsel  
4350 Esplanade Way, Suite 160  
Tallahassee, Florida 32399-0950  
Tel: 350.487.1062 | Fax: 850.922.3312

Rick Scott, Governor

Craig J. Nichols, Agency Secretary

October 25, 2013

James W. Linn, Esq.  
Lewis, Longman & Walker  
315 South Calhoun Street, Suite 830  
Tallahassee, Florida 32301

Dear Mr. Linn,

The Division has reviewed your letter of September 17, 2013, and the attachments thereto. Upon reviewing the materials and relevant statutes, as well as materials submitted by the Plan Attorney, the Division agrees that Coral Gables Pension Fund for Firefighters and Police Officers meets the "deemed to comply" criteria contained in Chapters 175 and 185, Florida Statutes.

Therefore, the proposed change to the Board composition does not jeopardize continued receipt of premium tax monies.

Thank you for your correspondence and please let us know if we can be of further assistance.

Sincerely,

Thomas E. Wright  
Assistant General Counsel