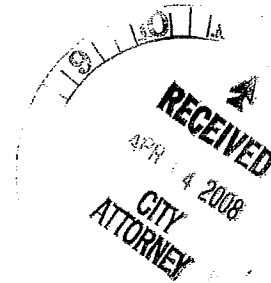


LEWIS, LONGMAN & WALKER, P.A.  
ATTORNEYS AT LAW

Reply To: Tallahassee

April 11, 2008

Charles L. Hauck, Esq.  
Senior Assistant City Attorney  
City of Gainesville  
Post Office Box 490, Station 46  
Gainesville, FL 32602



Re: Retiree Health Insurance Trust

Dear Charlie:

You have requested an opinion concerning the City Commission's ability to modify or terminate the retiree health insurance program created by Ordinance No. 0-06-14; and if the program is terminated, what obligations the City has with respect to the assets of the trust fund established pursuant to that ordinance.

We have reviewed Ordinance No. 0-06-14, and the memo from the City Attorney to the City Commission concerning the ordinance dated February 27, 2006. It is our understanding that Ordinance 0-06-14 reflects the City's current retiree health insurance program, and there are no other ordinances, resolutions, policies, collective bargaining agreements, or other documents that provide for continued payment of retiree health premiums, other than as reflected in Ordinance 0-06-14. We further understand that the City has not advised its employees, verbally or in writing, that the City will continue to pay a portion of their health insurance premium after they retire, other than as provided in Ordinance No. 0-06-14.

Ordinance 0-06-14 was adopted on February 27, 2006, and is codified at sections 2-630 through 2-638 of the City Code. Section 2-632 creates a trust fund to provide for payment of retiree health insurance premiums in accordance with a formula contained in the ordinance. The City Manager is directed to transfer City funds to the trust fund in an "amount sufficient to pay for the

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premium for health insurance benefits for...plan participants, including both the normal costs of such benefits and those necessary to amortize the unfunded liability...for such benefits over a period not longer than 40 years.” Section 2-632 states that “monies in this [trust] fund may be disbursed only for the payment of premiums for retiree health insurance...and the costs associated with managing, administering, and operating the program...”

Section 2-638 specifically addresses amendment and termination of the program, including the trust fund. Section 2-638 states:

(a) *Power to amend.* The city commission shall have the right, at any time, to amend any or all of the provisions of this retiree health insurance program; provided, however, that no such amendment shall authorize or permit any part of the trust fund to be diverted for purposes other than for the exclusive benefit of retirees and dependents.

(b) *Termination of program.* The city commission expects to continue this program indefinitely, but reserves the right to terminate this program and/or city contributions hereunder at any time. In the event of the termination or partial termination of the program, the rights, if any, of all participants to assets utilized to pay premiums of participants up to date of termination shall be non-forfeitable. In the event the trust fund is terminated, any assets remaining after all liabilities are satisfied shall be returned to the city.

The above provisions of the City Code clearly set forth the City Commission's authority to amend or terminate the retiree health insurance program, including the trust fund established pursuant to that program. A memo summarizing relevant statutes and court decisions bearing on an employer's obligations with respect to retiree health benefits is enclosed. The statutes and court decisions make it clear that, unless a contract or other document unambiguously vests the right to retiree health benefits, an employer may modify or terminate the health benefits provided to retirees. The only caveat is created by state law, which requires a public employer to provide the same health coverage to retirees and their eligible dependents as is offered to active employees, at a premium cost of no more than the premium cost applicable to active employees. Section 112.0801, Fla. Stat. However, this statute does not require the employer to pay any portion of the premium cost for retiree health coverage.

In view of the express provisions of section 2-638 of the City Code, and in the absence of any other City ordinance, resolution, contract or policy to the contrary, the City Commission has the right, at any time, to amend or terminate any or all of the provisions of the retiree health insurance program created by Ordinance 0-06-14. If the program is amended, the amendment may not authorize or permit any part of the trust fund to be diverted for purposes other than for the exclusive benefit of retirees and dependents. However, if the program and trust fund are terminated, participants have a non-forfeitable right to trust assets “utilized to pay premiums of

Charles L. Hauck

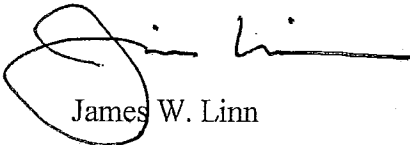
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participants up to date of termination.” Based on this language, it appears that upon termination of the trust, plan participants do not have any entitlement to trust assets in excess of those needed to pay the premiums of participants up to the date of termination. Section 2-638(b) expressly provides that, “in the event the trust fund is terminated, any assets remaining after all liabilities are satisfied shall be returned to the city.” Accordingly, in my opinion, upon termination of the trust, any trust assets remaining after payment of the premiums of participants up to the date of termination revert to the City.

Please call me if you have any questions concerning these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Linn". The signature is stylized with a large, circular flourish on the left side and a horizontal line extending to the right.

James W. Linn

JWL/es