

**From:** [Jim Linn](#)  
**To:** [Maggie Mooney](#)  
**Cc:** [Susan L. Smith](#); [Howard Tipton](#); [Glenn Thomas](#)  
**Subject:** RE: Pension Ordinance - General Employee COLA - Town of Longboat Key  
**Date:** Saturday, November 9, 2024 11:41:38 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image002.png](#)  
[GE COLA Ordinance with Linn edits 11.9.24.doc](#)

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Hi Maggie and all – I apologize for my delay in getting back to you on this. I have reviewed the draft ordinance you sent, as well as the opinions from Ron Cohen and the actuarial analysis dated 8/19/24.

Mr. Cohen's 2/14/24 opinion to the Board of Trustees aptly lays out the legal issue: whether a pension COLA adopted after an employee retires or separates from Town employment is prohibited by sec. 215.425, Fla. Stat., which states: "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made..."

Based on my reading of the statute, court decisions and Attorney General opinions cited below, the existing legal authority makes it clear that sec. 215.425 prohibits granting additional pension benefits to plan members who are no longer employed by the Town. Unless and until a court expressly rules that sec. 215.425 does not apply to retirement benefits or determines that the prior court decision and Attorney General opinions are overruled or not applicable, I recommend that the ordinance creating a pension COLA for general employees be limited to those plan members who are currently employed by the Town. The ordinance you sent does that, and with a couple of minor wording changes (see attached), I believe the ordinance may be considered for adoption by Town Council.

My legal analysis is set forth below. Please let me know if you have any questions or want to discuss.

Mr. Cohen's opinion cites *Brown v. City of Jacksonville Beach*, 696 So.2d 946 (Fla. 1<sup>st</sup> DCA 1977). In that case the First District Court held that a contract providing additional retirement income to a city employee entered into while the employee was still providing services to the city did not violate section 215.425. In pertinent part, the court stated:

Under the "plain meaning rule," it is presumed that the legislature intended the plain and obvious meaning of the provision that "no extra compensation" be made "after the service has been rendered." In this case, Appellant was still rendering services on February 4, 1991, when the parties executed the retirement contract providing additional retirement income. Thus, the contract did not violate section 215.425.

696 So.2d at p. 946 (cites omitted).

The Florida Attorney General has issued several opinions concerning the intent and application of the section 215.425 prohibition on "extra compensation." In AGO 81-98, the Attorney General opined that a city may not expend public funds to reimburse retired city employees for payments made to purchase additional past service credit under the city retirement plan, where the reimbursement was not authorized by the city at the time the employees retired. The Attorney General summarized the purpose of section 215.425 as follows:

The purpose of s. 215.425, (prohibiting extra compensation for work already performed), is to carry out the basic and fundamental principle that public funds may be used only for a public purpose, and it is contrary to this policy to use public funds to give extra compensation to public employees for work they have already performed for an agreed-upon wage.

In AGO 89-53, the Attorney General Opined that a city's purchase of an annuity for a retired employee who was already receiving pension benefits from the city pension plan at the time the annuity was authorized would violate the statutory prohibition against extra compensation for work already performed.

AGO 91-37 addressed a city's payment for unused sick leave to a retired employee, where the payment was for leave in excess of the maximum amount of leave for which the employee could be compensated at the time he retired, in accordance with city policy. The additional payment was authorized after the employee retired and separated from city employment. AGO 91-37 states:

In accordance with the city's policies, the employee received payment for 120 days of sick leave upon retirement as part of his "final pay." The city now is considering whether it may pay the retired employee a monetary sum equivalent to the value of his unused sick leave in excess of 120 days. The payment for sick leave in excess of 120 days would appear to be limited only to the particular employee and would not be a revision of the city's policies or retirement plan. . .

Section 215.425, F.S., provides in pertinent part that "[n]o extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered." The purpose of this provision is to carry out a basic and fundamental principle that public funds may be used only for a public purpose. It is contrary to this policy to use public funds to award extra compensation for work which has already been performed for an *agreed upon wage*.

Thus, retroactive extra compensation, lump sum allowances or other forms of compensation not provided by law or contract are prohibited by s. 215.425, F.S. Extra compensation generally refers to an additional payment for services performed or compensation over and above that fixed by contract or by law when the services are rendered.

Mr. Cohen's opinion also cites a more recent Attorney General Opinion, 2003-55, with a similar conclusion. Mr. Cohen correctly notes that Attorney General opinions are not binding on Florida courts.

Finally, Mr. Cohen's opinion cites to a 2022 opinion of the 4<sup>th</sup> District Court in *Kellerman v. Board of Trustees of City of Hollywood Firefighters' Pension System*, 336 So.3d 39 (Fla. 4<sup>th</sup> DCA 2022). In *Kellerman*, the District Court reversed a lower court ruling that members of the pension plan who retired before the city adopted an ordinance was adopted granting a "13<sup>th</sup> check" benefit did not have legal standing to challenge a subsequent reduction in the 13<sup>th</sup> check benefit. The District Court's decision on the standing of the retired firefighters is procedural and contains no reference to sec. 215.425. Although it is possible that a final decision in the *Kellerman* case could resolve the sec. 215.425 issue, unless and until a court expressly concludes that sec. 215.425 does not apply to retroactive retirement benefits or determines that the prior court decision and Attorney General opinions are overruled or not applicable, I cannot recommend that the COLA benefit be extended to plan members who have already retired or separated from Town employment.

Jim

**James W. Linn** | Of Counsel



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**From:** Maggie Mooney <[mmooney@flgovlaw.com](mailto:mmooney@flgovlaw.com)>

**Sent:** Thursday, October 17, 2024 1:50 PM

**To:** Jim Linn <jlinn@llw-law.com>

**Cc:** Susan L. Smith <:ssmith@longboatkey.org>; Howard Tipton <htipton@longboatkey.org>

**Subject:** FW: Pension Ordinance - Town of Longboat Key

**External Email**

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Hi Jim,

Per our conversation, please take a look at the attached draft ordinance that proposes a COLA increase for the Town's general employees enrolled in the Town's pension plan. As discussed, also attached is the back up materials relating to this proposal that were prepared for the benefit of the Town's Pension Board (represented by Ron Cohen). Given your history with the Town and its pension plan(s), we would like your perspective on the draft Ordinance and any considerations and history that should be presented to the Town Commission as they consider this proposal.

By way of copy, I am going to ask Sue Smith to please forward to you the latest actuarial valuation of the plan (probably dated around Oct 1 2023) that you requested for your review as well. Thank you in advance for looking at this for us!

Best regards,  
-Maggie

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**Board Certified by the Florida Bar in City, County & Local Government Law**

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**From:** Susan L. Smith <[ssmith@longboatkey.org](mailto:ssmith@longboatkey.org)>

**Sent:** Tuesday, October 15, 2024 11:43 AM

**To:** Maggie Mooney <[mmooney@flgovlaw.com](mailto:mmooney@flgovlaw.com)>

**Cc:** Trish Shinkle <[tshinkle@longboatkey.org](mailto:tshinkle@longboatkey.org)>

**Subject:** FW: Pension Ordinance

Good afternoon Maggie,  
See attached. Jim Linn is not retired just yet.

Do you want him to review this Ordinance or review for any other sections that may need changing as a result of this?

Sue

**Susan Smith, CGFO**

Finance Director

**Town of Longboat Key**

501 Bay Isles Road

Longboat Key, Florida 34228

(941) 316-6882

[ssmith@longboatkey.org](mailto:ssmith@longboatkey.org)

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**From:** Ron Cohen <[rcohen@loriumlaw.com](mailto:rcohen@loriumlaw.com)>

**Sent:** Tuesday, October 15, 2024 11:32 AM

**To:** Susan L. Smith <[ssmith@longboatkey.org](mailto:ssmith@longboatkey.org)>

**Cc:** Trish Shinkle <[tshinkle@longboatkey.org](mailto:tshinkle@longboatkey.org)>

**Subject:** RE: Pension Ordinance

Hi Sue,

I'm glad to hear from you. I've been concerned about my friends in Longboat Key. Hope it wasn't too bad. We were fine here. A non-event.

Here is a draft of the Ordinance. I did the title and the actual language of the change, but I don't have it in final form for passage. I think Maggie needs to see it.



**LORIUM LAW**  
Uncommon Perspective

**Ronald J. Cohen**

Member

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**From:** Susan L. Smith <[ssmith@longboatkey.org](mailto:ssmith@longboatkey.org)>  
**Sent:** Tuesday, October 15, 2024 8:46 AM  
**To:** Ron Cohen <[rcohen@loriumlaw.com](mailto:rcohen@loriumlaw.com)>  
**Cc:** Trish Shinkle <[tshinkle@longboatkey.org](mailto:tshinkle@longboatkey.org)>  
**Subject:** Pension Ordinance

Good morning Ron,

Hope you survived the storm and you and your family are well.

I am just checking on the Pension Ordinance for the General Employee's COLA.

The due dates for agenda items is shown below and wanted to get an idea what dates we may be shooting for.

11/4/2024 meeting - Materials Due 10/24/2024 Title Block to Newspaper by 10/16

12/2/2024 meeting – Materials due 11/20/2024 Title Block to Newspaper by 11/12

Thank you,

Sue

**Susan Smith, CGFO**

*Finance Director*

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