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June 26, 2025

Kevin D. Walsh, Acting State Comptroller  
State of New Jersey  
Office of the State Comptroller  
Audit Division  
P.O. Box 024  
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RE: Application of the Lifeguard Pension Law – Discussion Draft

Dear Mr. Walsh:

As you are aware, this firm represents the City of Long Branch as their municipal counsel. We are in receipt of the draft report submitted by your office concerning the status of Long Branch's lifeguard pension plan and offer the following response as requested.

The distinction between a City "type" of government, and the "form" of municipal government that the municipality operates under has become meaningless in the broader context of municipal operations. With the exception of the Small Municipality plan (requiring a population of under 12,000) and the Borough form of government (available only to borough type municipalities), any municipality can choose from any other form of municipal government to establish and administrate their governing powers and responsibilities. While the initial impetus behind incorporating a municipality as a city appears to have greater autonomy over their own affairs, the 1917 Home Rule Act and subsequent legislative amendments have largely erased the distinctions between Boroughs, Townships, Villages, Towns and Cities in all but name. While a greater degree of executive power may be a hallmark of the original City type of government, the

current statutory structure allows for a Township like Edison to operate under the same form of government as the City of Long Branch, regardless of incorporation status.

Further compounding this issue are the historical anomalies in place whereby school funding laws, liquor laws affecting Townships but not Boroughs, and government funding predicated on municipal status which have resulted in the creation of hundreds of municipal entities within the state which operate identically to the Atlantic shoreline cities affected by these statutes. In this manner, the State has variously been home to the Borough of Neptune City, the Township of Glen Ridge Borough, the City of Orange Township, and South Orange Village Township among many others. Red Bank alone has been, at various times, Red Bank Town, Shrewsbury City, and ultimately the Borough of Red Bank. While many of these municipalities have since reamended their corporate documents and status in a return to historical form, the fact remains that of the more than 40 municipalities bordering the Atlantic Ocean, fewer than a dozen fall into the category affected by this legislation. In Monmouth County alone, the municipalities of Manasquan, Sea Girt, Spring Lake, Lake Como, Belmar, Bradley Beach, Neptune (Ocean Grove), Allenhurst, Deal and Monmouth Beach all directly border the Atlantic Ocean yet are under no obligation to fund lifeguard pension programs for their seasonal employees. Under the current logic, if the City of Long Branch were to officially change its name to the Town of Long Branch – even while maintaining the same form of government - any such pension obligations would immediately cease.

Moreover, these distinctions seem to have no regard for population, nor can they be rationally related to the longevity of service of these guards. The City of Cape May and its roughly 2,700 residents employ approximately 80 lifeguards/staff each year, while Atlantic City and its 38,000 residents' staff approximately 160 lifeguards during the peak bathing season. Of the approximately 140 lifeguards staffed by the City of Long Branch each year, most will be employed in fewer than 5 seasons (between the ages of 17-22) with oversight provided by full-time employees of the City who would not qualify for the pension program themselves. These employees would, in effect, never vest in the program and would simply represent a revolving door of contributions and refunds paid out upon their departure from employment.

Finally, there exists the problematic aspect of this statute in that it may well constitute special legislation as prohibited by the State Constitution. A law is regarded as special legislation “when by force of an inherent limitation, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate.” Town of Morristown v. Woman’s Club, 124 N.J. 605, 622 (1991). In Vreeland v. Byrne, 72 N.J. 292 (1977), the Court established a three-part test to determine whether a statute constituted special legislation. Under that test, the purpose and object of the enactment must first be discerned, then applied to the actual situation presented, and finally it must be decided whether, as applied, the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act. See Vreeland at 300-301. For all practical purposes, the statute itself, in singling out a highly selective subsection of municipalities without a conceivable rational basis for their inclusion while others are specifically excluded, seems to violate these principles.

RAINONE COUGHLIN MINCHELLO

June 26, 2025

Page 3

If the goal is to encourage the return of suitable lifeguards for the protection of Jersey Shore beachgoers, then it fails to do so along the vast majority of the Jersey Shore. By excluding Boroughs, Townships, Villages and Towns from the requirement, miles and of miles of shoreline are excluded from the supposed purpose, most frequently in municipalities that are contiguous with each other. While it is true that a statute is not unconstitutional as special legislation merely because its effect is limited to a particular municipality (or municipalities), the classification by which a statute limits its effects must be grounded on a rational basis. Town of Seacaucus v. Hudson County Board of Taxation, 133 N.J. 482, 500 (1993). While the Court has indicated that one of the factors to look to would be whether “other municipalities could, and from time to time have, come within its scope” (*Ibid.*), the fact of the matter is that no Atlantic Shore municipality in New Jersey would currently adopt City classification if it included these additional mandates. In fact, of the nine cities boarding the Atlantic Ocean with lifeguard pension programs, only one continues to use the city form of government at all regardless of the type of incorporation they have.

Accordingly, the continued enforcement of this statute despite the lack of a rational basis for the distinctions that it draws between similarly situated municipalities, and despite the limited applicability it has to the employees affected is both archaic and wasteful. The diversion of municipal tax dollars for the funding of these programs – much of which would remain unutilized due to the reality of seasonal employment – is an unnecessary cost which appears to be counter to the stated purpose of the Office of the State Comptroller.

Very truly yours,

**RAINONE COUGHLIN MINCHELLO, LLC**

By: 

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MRB/arg

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