

Death benefits for law enforcement DROP participants

Number: INFORMAL

Date: December 14, 2005

Mr. Guy M. Tunnell
Commissioner
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

Dear Commissioner Tunnell:

The Attorney General has asked that I respond to your inquiry. You ask substantially the following questions:

1. Are the in-line-of-duty death benefits provided in section 121.091(7)(d), Florida Statutes, available to Deferred Retirement Option Program (DROP) participants?
2. Are the death benefits provided in section 112.19, Florida Statutes, available to DROP participants?

Question One

You state that you have contacted the Department of Management Services on this issue and been advised by that department that Deferred Retirement Option Program (DROP) participants are excluded from the in-line-of-duty death benefits provided in section 121.091(7)(d), Florida Statutes. You state that you are inclined to agree with the department but request this office's opinion on this issue.

Section 121.091(7)(d), Florida Statutes, provides:

"(d) Notwithstanding any other provision in this chapter to the contrary, *with the exception of the Deferred Retirement Option Program*, as provided in subsection (13):

1. The surviving spouse of any member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime or, if the member was vested, such surviving spouse may elect to receive a benefit as provided in paragraph (b). Benefits provided by this paragraph shall supersede any other distribution that may have been provided by the member's designation of beneficiary.
2. If the surviving spouse of a member killed in the line of duty dies, the monthly payments which would have been payable to such surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child.
3. If a member killed in the line of duty leaves no surviving spouse but is survived by a child or children under 18 years of age, the benefits provided by subparagraph 1., normally payable to a

surviving spouse, shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child.

4. The surviving spouse of a member whose benefit terminated because of remarriage shall have the benefit reinstated beginning July 1, 1993, at an amount that would have been payable had the benefit not been terminated." (e.s.)

The in-the-line-of-duty death benefits afforded by section 121.091(7)(d), Florida Statutes, clearly exclude DROP participants. The Department of Management Services has advised you that a member participating in DROP is excluded from the in-line-of-duty death benefits because for purposes of the Florida Retirement System, such individual is already retired.[1]

The language in section 121.091(7)(d), Florida Statutes, excepting the DROP program was added by the Legislature in 1997.[2] An examination of the legislative history surrounding the adoption of this language indicates that the Legislature did not intend that in-line-of-duty survivor benefits would be payable to DROP participants.[3]

Question Two

Section 112.19, Florida Statutes, provides for death benefits for law enforcement, correctional, and correctional probation officers.[4] The statute provides for the sum of \$50,000, as adjusted pursuant to paragraph (2)(j), to be paid to an officer who, while engaged in the performance of his or her duties, is accidentally killed or receives accidental bodily injury that results in the loss of the officer's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted.[5] An additional sum of \$50,000, as adjusted pursuant to paragraph (2)(j), is to be paid if an officer is accidentally killed and the accidental death occurs as a result of the officer's response to fresh pursuit, as a result of the officer's response to what is reasonably believed to be an emergency, at the scene of a traffic accident to which the officer has responded, or while the officer is enforcing what is reasonably believed to be a traffic law or ordinance.[6] The sum of \$150,000, as adjusted pursuant to paragraph (2)(j), is to be paid if an officer, while engaged in the performance of the officer's duties, is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act.[7]

These benefits are in addition to any workers' compensation or pension benefits and are exempt from the claims and demands of the deceased officer's creditors.[8] In addition, there are provisions regarding the waiver of certain educational expenses incurred by the officer's spouse or children while obtaining post-high school education, [9] and in limited circumstances, payments for burial expenses of the deceased officer and health insurance premiums of the officer's spouse and dependent children are required.[10]

Unlike section 121.091, Florida Statutes, section 112.19, Florida Statutes, does not contain an exclusion for DROP participants. Moreover, as stated by the Department of Management Services, section 121.091(13)(b)3. provides that a DROP participant shall be a retiree under the Florida Retirement System for all purposes; "[h]owever, participation in the DROP does not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective and termination occurs as provided in s. 121.021(39)."

Thus, nothing in section 112.19, Florida Statutes, limits its application to non-DROP participants. Rather, the statute applies to law enforcement, correctional, or correctional probation officers as that term is defined in the statute.[11] Thus, it appears that the death benefits provided in section 112.19, Florida Statutes, are available to law enforcement, correctional, or correctional probation officers who are DROP participants.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] See s. 121.091(6)(h), Fla. Stat., providing an "option selected or determined for payment of benefits as provided in this section shall be final and irrevocable at the time a benefit payment is cashed or deposited or credited to the Deferred Retirement Option Program as provided in subsection (13)." *And see* s. 121.091(13)(b)3., Fla. Stat., providing in part that the "DROP participant shall be a retiree under the Florida Retirement System for all purposes" with the exception of certain enumerated provisions which do not include paragraph (7)(d).

[2] See s. 2, Ch. 97-154, Laws of Florida.

[3] See House of Representatives Committee on Governmental Operations Final Bill Research & Economic Impact Statement on CS/HB 663 [enacted as Ch. 97-154, Laws of Fla.; s. 4 of act was vetoed by Governor with the rest of act becoming law without Governor's signature], dated May 8, 1997, stating:

"After the member enters the DROP he or she is retired for the purposes of the FRS If the member should die while participating in DROP, the member's beneficiary will receive the accrued value of the member's individual DROP account; however, the member's survivors would only be eligible for a survivor (continuing) benefit if the member had chosen option 2, 3, or 4 when he or she retired at the beginning of the DROP. *In-line-of-duty survivor benefits are not payable to DROP participants.*" (e.s.)

[4] See s. 112.19(1)(b), Fla. Stat., defining "Law enforcement, correctional, or correctional probation officer" as

"any officer as defined in s. 943.10(14) or employee of the state or any political subdivision of the state, including any law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, or public defender investigator, whose duties require such officer or employee to investigate, pursue, apprehend, arrest, transport, or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime; and the term includes any member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices. The term also includes any full-time officer or employee of the state or any political subdivision of the state, certified pursuant to chapter 943, whose duties require such officer to serve process or to attend terms of circuit or county court as bailiff."

And see s. 112.19(1)(a), Fla. Stat., defining "Employer" to mean "a state board, commission, department, division, bureau, or agency, or a county, municipality, or other political subdivision of the state, which employs, appoints, or otherwise engages the services of law enforcement, correctional, or correctional probation officers."

[5] Section 112.19(2)(a), Fla. Stat. Section 112.19(2)(j), Fla. Stat. provides:

"Any payments made pursuant to paragraph (a), paragraph (b), or paragraph (c) shall consist of the statutory amount adjusted to reflect price level changes since the effective date of this act. The Bureau of Crime Prevention and Training shall by rule adjust the statutory amount based on the Consumer Price Index for all urban consumers published by the United States Department of Labor. Adjustment shall be made July 1 of each year using the most recent month for which data are available at the time of the adjustment."

And see Rule 2A-8.005, Fla. Admin. C.

[6] Section 112.19(2)(b), Fla. Stat.

[7] Section 112.19(2)(c), Fla. Stat.

[8] Section 112.19(2)(e), Fla. Stat.

[9] Section 112.19(3), Fla. Stat.

[10] *See* s. 112.19(2)(f)-(h), Fla. Stat.

[11] *See* n.4, *supra*.