

Municipal police pension plan, term of office

Number: INFORMAL

Date: July 09, 2003

Ms. Patti Dunbar
Trustee
Riviera Beach Police Pension Fund
471 West 37th Street
Riviera Beach, Florida 33404

RE: MUNICIPALITIES–POLICE OFFICERS–PENSIONS–TERMS OF OFFICE–term of office for "fifth member" of municipal police pension plan. s. 185.05, Fla. Stat.

Dear Ms. Dunbar:

Thank you for contacting the Florida Attorney General's Office regarding terms of office for members of municipal police pension plans. Attorney General Crist has asked me to respond to your letter.

You have advised this office that the term of office for the "fifth member" of the Riviera Beach Police Pension Fund has expired and this officer is currently holding-over until he or she is replaced or reappointed. Section 185.05(1)(a), Florida Statutes, this member "shall serve as trustee for a period of 2 years, and may succeed himself or herself in office[.]"

In Attorney General's Opinion 99-25 this office concluded that the "fifth member" of the City of Coral Springs Police Pension Board could hold over as a *de facto* officer until a successor qualified for that office but is not required to continue in office. This conclusion is based on the language of Article II, section 5(b), Florida Constitution, providing that state and county officers "shall . . . continue in office until a successor qualifies." The constitutional provision does not *require* municipal officers to hold over in office, rather, the officer could continue in office in order to ensure that the work of the board is accomplished while the search for a new board member takes place.

Section 185.05(1)(a), Florida Statutes, does not contemplate and Attorney General's Opinion 99-25 does not address a situation in which members of a board of trustees attempt to avoid the two year term limit provision by serving indefinitely as *de facto* officers after the expiration of their term. Rather, the opinion seeks to provide a reasonable solution to the problem of the lack of an immediate successor for a pension board member when the statute requires that each board be composed of five members.

I would note that municipal officers, such as members of the board of trustees for municipal police pensions, are subject to suspension or removal from office by the Governor for "malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties." Section 112.51, Florida Statutes. Thus, a member of the board who attempted to subvert the term limit provision of the statute could be subject to gubernatorial

suspension or removal.

After discussing this matter with Ms. Patricia Shoemaker, State Administrator for the plan, it is my understanding that the Riviera Beach Police Pension Board has been advised that a "fifth member" should be selected as quickly as possible so that the work of the board may continue without interruption. This office concurs in that advice.

I trust that these informal comments will be helpful to you in resolving your questions about Attorney General's Opinion 99-25. Thank you for contacting the Florida Attorney General's Office to express your concerns.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

cc. Ms. Patricia Shoemaker
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