

Florida Retirement System, municipal officers

Number: INFORMAL

Date: November 03, 1999

Mr. Bill Colon
11640 Northwest 30 Place
Sunrise, Florida 33323

RE: MUNICIPALITIES--RETIREMENT--MUNICIPAL HOME RULE--PUBLIC OFFICERS AND EMPLOYEES--FLORIDA RETIREMENT SYSTEM--participation of municipal officers in Florida Retirement System. s. 121.052, Fla. Stat., as amended by s. 3, Ch. 99-9, and s. 32, Ch. 99-255, Laws of Florida.

Dear Mr. Colon:

Thank you for your letter of August 3, 1999, requesting assistance in determining the effect of a recently enacted state statute, section 121.052(2)(f), Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Section 121.052(2)(f), Florida Statutes, authorizes municipal officers or those of a special district to participate in the Florida Retirement System. The statute provides:

"(2) MEMBERSHIP.--The following holders of elective office, hereinafter referred to as 'elected officers,' whether assuming elective office by election, re-election, or appointment, are members of the Elected Officers' Class . . . :

(f) Any elected officer of a municipality or special district on or after July 1, 1997, as provided in paragraph (3)(e)."

Subsection (3)(e), as amended by section 32, Chapter 99-255, Laws of Florida, requires a majority vote of the governing body of the municipality to designate all its elected positions for inclusion in the Elected Officers' Class. This election must have taken place between July 1, 1997, and December 31, 1997, and is irrevocable. The designation of these positions is effective on the first day of the month following receipt by the department of the ordinance or resolution passed by the governing body.

Thus, the Florida Legislature has made a determination that elected municipal officers may participate in the Florida Retirement System so long as they follow the steps outlined in the statutes.

With regard to the interaction among the Municipal Home Rule Powers Act (Chapter 166, Florida Statutes), local charters and ordinances and other state statutes, I would note that Chapter 166, Florida Statutes, provides that municipalities "have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when

expressly prohibited by law."[1]

One impediment to constitutionally derived legislative powers of municipalities occurs when the municipality enacts legislation which conflict with state law.[2] Municipal legislation is inferior to state law and must fail when conflict arises.[3] As the court stated in *Rinzler v. Carson*, "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." [4]

This office has no authority to interpret or address local legislation and so may not attempt to determine whether the provisions you refer to conflict. Any determination of whether the Sunrise City Council violated a local ordinance or charter provision by adopting the ordinance authorized in section 121.052, Florida Statutes, is a judicial question upon which this office may not comment.

I trust that this information will be helpful to you and enclose a copy of section 121.052, Florida Statutes, as amended, for your consideration.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Section 166.021(1), Fla. Stat.

[2] See, e.g., *City of Miami Beach v. Rocio Corporation*, 404 So. 2d 1066, 1069 (Fla. 3d DCA 1981), *pet. for rev. den.*, 408 So. 2d 1092 (Fla. 1981).

[3] *Id.*

[4] 262 So. 2d 661, 668 (Fla. 1972).