

Municipalities, reemployment after retirement

Number: INFORMAL

Date: May 10, 1999

Mr. Donald J. Lunny, Jr.
Plantation City Attorney
400 Northwest 73rd Avenue
Plantation, Florida 33317

Attention: Mr. W. Michael Brinkley, Plantation Assistant City Attorney

RE: MUNICIPALITIES--PUBLIC OFFICERS AND EMPLOYEES--RETIREMENT--
EMPLOYMENT--right of retired municipal officer to receive retirement benefits and salary
payment after election to new municipal office. ss. 112.05(4) and 122.16(2), Fla. Stat.

Dear Mr. Lunny:

You have asked for my opinion on whether a retired municipal official who is receiving vested retirement benefits is authorized to continue to receive such benefits during the period for which the official has subsequently been elected to serve again as a municipal official. Your letter indicates that the City of Plantation has established a contributory retirement system covering this situation under section 112.048, Florida Statutes.

Section 112.048, Florida Statutes, authorizes Florida municipalities to provide a retirement system for elected officials and to decide whether that system will be contributory or noncontributory.[1] Pursuant to its terms, this section applies to elected municipal officers who have held elective office in a particular city or town "for a period of 20 years or more consecutively, or for a period of 20 years or more consecutively, except for one period not exceeding 6 months[.]"[2] Subsection (3) of this statute provides that:

"Each city or town may by ordinance establish a contributory retirement system for those officials defined in subsection (2). The rules for participation, the amount of the official's contributions, and the method of appropriation and payment may be determined by ordinance of the city or town."

Thus, the City of Plantation may regulate these payments by ordinance. However, it does not appear that the City of Plantation ordinance addresses the issue of payment of pension funds to a city official who, subsequent to retirement, returns to public service.

A similar situation was presented in Attorney General's Opinion 56-241 (1956). The question addressed in that opinion was whether a state officer or employee who had retired could subsequently accept state employment after his retirement without affecting his retirement compensation. At that time the statute regulating the retirement of state officers and employees did not contain a provision prohibiting a retired person from accepting other and further state employment.[3]

The conclusion in that opinion turned on the public policy of the state, which, as reflected in a number of statutory provisions, was that "persons drawing retirement pay or pensions for past public service should not be permitted to become reemployed by the state and draw both retirement pay or pension and a salary from such state employment at the same time." It would appear that this continues to be the public policy of the state, as reflected in a number of statutes including section 112.05(4)(a), Florida Statutes, prohibiting state employees participating in the Florida Retirement System from receiving both a salary from reemployment and retirement benefits for a period of 12 months immediately subsequent to the date of retirement and section 122.16(2), Florida Statutes, prohibiting any person retired under the State and County Officers and Employees' Retirement System from receiving both a salary from reemployment with any agency participating in the Florida Retirement System and retirement benefits under chapter 122, Florida Statutes, for a period of 12 months immediately subsequent to the date of retirement.

However, in the intervening years since this earlier opinion was issued, Florida has adopted the principle of municipal home rule. As expressed in the Florida Constitution^[4] and implemented in Chapter 166, Florida Statutes, municipalities may legislate on any subject upon which the state legislature may act unless expressly prohibited by law.^[5]

It is apparent that the Legislature has spoken on the issue of retired officers and employees receiving both a salary for reemployment and retirement benefits and has prohibited these payments. The City of Plantation has not. Therefore, in the absence of any ordinance prohibiting such payments, it would appear that the city may not deny a retired officer simultaneous payment of retirement benefits and a salary for reemployment with the city.

This informal opinion was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The opinion expressed herein is that of the writer and should not be considered a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Section 112.048(1), Fla. Stat.

[2] Section 112.048(2)(a), Fla. Stat. The statute also provides that, under certain circumstances, military service does not constitute a break in consecutive service when the United States is at war.

[3] See s. 112.05, Fla. Stat. (1955).

[4] Article VIII, s. 2(b), Fla. Const.

[5] *And see City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066 (Fla. 3d DCA 1981), *pet. for rev. den.*, 408 So. 2d 1092 (Fla. 1981), and cases cited therein.