

Retirement Plans

Number: AGO 91-15

Date: January 03, 1996

Subject:
Retirement Plans

Ms. Mary Jill Hanson and Ms. Bonni S. Jensen
Attorneys for Board of Trustees of
the Palm Beach Gardens Police Officers'
Retirement Trust Fund

RE: MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST
FUNDS—MUNICIPALITIES—PUBLIC OFFICERS AND EMPLOYEES—RETIREMENT—absent
express provision, s. 185.15, F.S., does not apply to "local law" retirement plans.

QUESTION:

Does s. 185.15, F.S., limit reentry into a local law retirement plan by a police officer who has previously elected to not participate in a retirement fund?

SUMMARY:

Absent an express provision making s. 185.15, F.S., applicable to retirement plans created pursuant to local law, the prohibition against reentry into a retirement plan contained therein would not apply to local law plans.

Chapter 185, F.S., provides a uniform retirement system for police officers and establishes minimum standards for the operation and funding of municipal police officers' retirement trust fund systems and plans.[1] The chapter authorizes two types of retirement plans, "chapter plans" and "local law plans." "Chapter plans" are those created pursuant to Ch. 185, F.S., with the statute's provisions controlling the plans' terms, conditions, and benefits.[2] "Local law plans" are those created by special act of the Legislature or by municipal ordinance and may contain terms and conditions and benefits which may differ substantially from those contained in Ch. 185, F.S.[3]

In *Florida League of Cities, Inc. v. Department of Insurance and Treasurer*, [4] the court determined that the individual subsections in Chs. 175 and 185, F.S., are applicable to local law plans only if there is a specific provision expressly making them applicable to local law plans.[5] This conclusion is based upon a municipality's constitutional and statutory authority to enact legislation on a subject already addressed by the Legislature, unless the area is expressly preempted by the Constitution or state law.[6] Thus, in the absence of language specifically making a subsection of Chs. 175 or 185, F.S., applicable to a local law plan, the subsection does not affect such a plan.

This office, in AGO 89-90, concluded that the Palm Beach Gardens Police Officers' Retirement Trust Fund (fund), created pursuant to Ch. 185, F.S., was a "chapter plan" subject to the minimum requirements contained therein. Accordingly, it was determined that the fund was subject to the provision in s. 185.15, F.S., permanently barring reentry into a retirement fund by police officers who previously have elected not to participate in it.

Subsequent to the issuance of AGO 89-90, the City of Palm Beach Gardens (city) subsequently repealed Art. II, Ch. 19, Palm Beach Gardens Code, the Policemen's Retirement Trust Fund. The city enacted Ordinance 3, 1991 creating a new fund under s. 185.35, F.S.[7] Section 185.35, F.S., sets forth the minimum standards for "local law" funds to allow such funds to participate in the distribution of a tax fund for municipal police officers' retirement plans.[8] In light of its creation by ordinance and having met the requirements of s. 185.35, F.S., the new fund would be considered a local law plan.[9]

The city now proposes to amend Ordinance 3, 1991, to allow former members of the retirement fund who are employed by the city as police officers to reenter the fund as members during a 30-day period following notice to the employees.[10] In the absence of a provision expressly making s. 185.15, F.S., applicable to local law plans, preventing reentry into the retirement plan, it would appear that the city could amend its plan to allow reentry by those police officers who have previously elected not to participate.[11] If the plan is in compliance with s. 185.35, F.S., however, any amendment to its terms or conditions must contain an actuarial impact statement of the proposed amendment and must be approved by the municipality.[12]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Section 185.01, F.S.

[2] See ss. 185.03 and 185.07, F.S., and *Florida League of Cities, Inc. v. Department of Insurance and Treasurer*, 540 So.2d 850, 853 (1 D.C.A. Fla., 1989).

[3] See s. 185.32, F.S., stating that Ch. 185, F.S., shall not apply to any person who is or may become eligible to become a member of any other retirement system provided for by law or by ordinance of an incorporated municipality.

[4] 540 So.2d 850 (1 D.C.A. Fla., 1989).

[5] *Id.*, at 859.

[6] 540 So.2d at 856. See s. 2(b), Art. VIII, State Const., and s. 166.021(3), F.S.

[7] See Ordinance 3, 1991, Palm Beach Gardens Code, January 3, 1991.

[8] See ss. 185.07, 185.08, and 185.09, F.S., providing for the creation and maintenance of funds in each municipality of this state which has a regularly organized police department.

[9] See 540 So.2d at 853 ("chapter plans" are those created under Chs. 175 and 185, F.S., with the provisions of those chapters controlling; "local plans" are those created by special act of the Legislature or by municipal ordinance and may contain provisions different than those in Chs. 175 and 185, F.S.).

[10] See Amendment No. VII to the Retirement Plan of the Police and Fire Departments of the City of Palm Beach Gardens, Florida, October 29, 1990.

[11] See s. 185.32, F.S., making Ch. 185, F.S., inapplicable to any person who is or may become a member of a retirement system provided by law or by any ordinance of any incorporated municipality of this state and providing that no provision of Ch. 185, F.S., shall be construed as limiting, modifying or enlarging any ordinance of any incorporated municipality of this state.

[12] See s. 185.35(1)(j), F.S.