Reemployment of retired city clerk

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Subject:
Reemployment of retired city clerk

PUBLIC OFFICERS AND EMPLOYEES--REEMPLOYMENT OF RETIRED CITY CLERK

To: Edward Curren, City Attorney, Okeechobee

Prepared by: Sharyn L. Smith, Assistant Attorney General, and John Gierach, Legal Intern

QUESTION:

May a retired city clerk be reappointed by the city as city clerk or reemployed as a deputy city clerk if she were to waive her pension during the employment period, without affecting her right to draw her retirement pension from the date of her future resignation?

SUMMARY:

A retired city clerk may be appointed by the city as city clerk to fill a vacancy in the office, pending the election of a successor, or may be employed as deputy city clerk, if she were to waive her pension during the appointment or employment period. Such waiver would not affect her right to draw her retirement pension from the date of her future resignation.

In AGO 073-251, it was ruled that "the elected municipal officials who are entitled to the benefits of Section 165.25 . . . are governed and controlled by its provisions, and not by the reemployment provisions of Ch. 121." Attorney General Opinion 073-251 did not decide the question of whether an individual could retire and receive benefits under both s. 165.25, F. S., and Ch. 121, F. S.

It is obvious from the facts related by you that the city clerk did, in fact, retire under former s. 165.25 (now s. 121.20, F. S.); therefore, pursuant to the ruling quoted above, her entitlement to benefits will be controlled by former s. 165.25. It should be recognized that there is no express language or policy under former s. 165.25 which would prohibit a waiver of retirement benefits by the retired city clerk if she were appointed to fill a vacancy in the office, pending election of a successor in accordance with the requirements of the city's charter or employed as a deputy city clerk. Accordingly, the retired city clerk may be temporarily appointed or employed, as the case may be, if she waives her pension for said period of appointment or employment.

It should be noted that if the retired city clerk is employed as deputy city clerk and the city has adopted the Florida Retirement System, she can participate in that system during her reemployment and after an appropriate period of service, retire under that system.

Your question is, therefore, answered in the affirmative.