

Ch. 65-1355 mentions the power to annex additional territory. Therefore, it must be held that, since the district is not a municipal corporation, and since it has only those powers specifically given to it by the legislature, or necessarily implied in order to carry out those powers, said district cannot annex any additional territory either under §171.04, F. S., or under its creating statute.

Since question one is answered in the negative, there is no need to consider question two.

073-315—September 5, 1973

MARRIAGES

DEFINITION OF "REGULARLY ORDAINED MINISTER"

To: *Clafin Garst, Jr., Manatee County Court Judge, Bradenton*

Prepared by: *Joseph C. Mellichamp III, Assistant Attorney General*

QUESTION:

What is meant by the term "regularly ordained minister" as it is used in §741.07, F. S.?

SUMMARY:

The definition of the term "regularly ordained minister" as it is used in §741.07, F. S., is solely dependent on the several religious societies. Thus, if a religious society has determined that a particular individual is an ordained minister under its creed, then that person may solemnize marriages pursuant to said §741.07, and all marriage licenses issued in this regard should be handled as provided for in §§382.23, 382.24, and 741.09, F. S.

Section 741.07, F. S., provides that:

All regularly ordained ministers of the gospel or elders in communion with some church . . . may solemnize the rights of matrimonial contract, under the regulations prescribed by law.

The manner in which the relation of minister, pastor, priest, or rabbi is created depends upon the rules of the particular congregation or denomination. [See] 66 Am. Jur. 2d *Rel. Soc.* §22; AGO 049-379, Aug. 15, 1949, Biennial Report of the Attorney General, 1949-1950, p. 567 and AGO 050-89, Feb. 22, 1950, Biennial Report of the Attorney General, 1949-1950, p. 568. A religious or church society is a voluntary organization whose members are associated not only for religious exercises, but for the purpose of maintaining and supporting its ministry, providing the conveniences of a church home, and promoting the growth and efficiency of the work of the general church. *First Independent Missionary Baptist Church of Chosen v. McMillan*, 153 So. 2d 337 (2 D.C.A. Fla., 1963); 28 Fla. Jur. *Religious Societies* §§2 and 5; 66 Am. Jur. 2d *Religious Societies* §1.

It is generally recognized—so long as a professed creed is not subversive of the peace and good order of society—that it is not within the province of any department of the government to settle differences in creeds or to determine what ought or ought not to be a fundamental of religious beliefs, except so far as is necessary to protect the civil rights of persons and to preserve the public peace. *State ex rel. Singleton v. Woodruff*, 13 So.2d 704 (Fla. 1943); 6 Fla. Jur. *Const.* §239; 66 Am. Jur. 2d *Religious Societies* §31.

In view of the above, it is my opinion that the definition of "regularly ordained minister" under §741.07, F. S., is solely dependent on the several religious

societies. Thus, if a religious society has determined that a particular individual is an ordained minister under its creed, then that person may solemnize marriages pursuant to said §741.07, and all marriage licenses issued in this regard should be handled as provided for in §§382.23, 382.24, and 741.09, F. S.

073-316—September 5, 1973

RETIREMENT

RETIREMENT SYSTEM ELECTION BY MUNICIPAL EMPLOYEE

To: *W. L. Stark, City Clerk, Tampa*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

May a municipal official who has served continuously as an elected city official for twenty-one years retire under §165.25, F. S., as amended by Ch. 73-129, Laws of Florida?

SUMMARY:

A municipal official who has served continuously as an elected city official for twenty-one years is entitled to the pension benefits provided by §165.25, F. S., if the city has no other retirement system available to its elected officials. However, if the city has adopted such a retirement system, he must retire and claim the benefits of the pension plan under §165.25 prior to October 1, 1973.

You state that you served as an elected city councilman for a four-year term beginning in November of 1951 and as an elected city clerk of the city beginning in 1955, "making a total of over twenty-one years of uninterrupted service with the city." Under §165.25, *supra*, each city and town of this state has long been required to provide a pension for those of its elected officials who have held elective office of such city or town for twenty consecutive years and to budget funds annually sufficient to meet the statutory requirement. This section was amended in 1973 [§4, Ch. 73-129, Laws of Florida] and transferred to §121.20, effective October 1, 1973, to require each city or town to provide a retirement system for its elected officials, either contributory or noncontributory. The amendment also added to the statute the provision italicized below:

... and such city and town shall appropriate and provide in its annual budget sufficient moneys to meet the requirements of this section *where no other plan is available for elected local officials.* . . . (Emphasis supplied.)

You do not state whether the city has adopted the Florida Retirement System or any other retirement plan that is available to its elected officials. I ruled in AGO 073-251 that, after October 1, 1973, a municipality must make the pension payments provided by §165.25, *supra*, to its elected municipal officials only if no other retirement plan is available for such officials.

Assuming then, that the city has not adopted another retirement plan for its elected public officials, you are entitled to the pension-plan benefits provided by §165.25, *supra*. If the city has adopted another retirement plan that is available to its elected officials, your election to retire and accept the pension benefits of §165.25 must be made prior to October 1, 1973, the effective date of Ch. 73-129, *supra*.

To: Honorable T. C. Merchant, Jr., Madison, Florida:

..... your inquiry must be answered in the negative.

April 28, 1949—049-183.

MINISTERS—JUDICIAL OFFICERS—NOTARIES PUBLIC—AUTHORITY FOR PERFORMANCE MARRIAGE CEREMONIES

QUESTIONS: 1. Under Florida law what officials are authorized to solemnize the rites of matrimony?

2. Under the provisions of Section 117.04, Florida Statutes, 1941, may Notaries Public still solemnize matrimony?

To: Honorable Sam D. May, County Judge, Washington County, Chipley, Florida:

In reply to your first question, I wish to state that Section 741.07 is the section defining the right to solemnize matrimony.....

In reply to your second question, I wish to state that there has been no amendment to Section 117.04, and that a Notary Public may solemnize marriage.

August 15, 1949—049-379.

MARRIAGE CEREMONY—LICENSED OR "REGULARLY ORDAINED" MINISTER—AUTHORIZED TO PERFORM

QUESTION: Whether or not a *licensed* minister of the gospel in the Methodist Church, who is authorized by his district superintendent and Bishop to perform the marriage ceremony, is to be considered a regularly ordained minister of the Gospel, as referred to in Section 741.07, Florida Statutes?

To: Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:

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..... it is my opinion that the Legislature of the State of Florida intended the words "regularly ordained" in the statute to include those ministers who have been recognized in the manner required by the regulations of their respective denominations to perform marriage ceremonies.

The question, therefore, is answered in the affirmative.

October 24, 1949—049-507.

MARRIAGE CEREMONY—TEN-YEAR OLD WITNESS—COMPETENCY—DETERMINATION BY COURT

QUESTION: Please inform me if a ten-year old witness to a marriage is permitted under our statutes?

To: Honorable O. Frank Scofield, County Judge, Citrus County, Inverness, Florida:

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..... if under all the circumstances in the case the court considers a ten-year old child competent, his testimony may be received, otherwise not.