

. . . elected in accordance with subsection (6) of this section, the optional form of payment most favorable to his beneficiary, as determined by the administrator. . . . *The monthly benefit provided in this paragraph shall be paid to the member's beneficiary (spouse or other dependent) for his or her lifetime.* (Emphasis supplied.) [Section 121.091(7)(b).]

[Special provision is made in paragraph (7)(c) for death benefits payable when a member is killed in the line of duty, with which this opinion is not concerned.]

As noted above, a surviving spouse or other dependent is a "joint annuitant" who qualifies as a beneficiary under the third and fourth options of §121.091(6)(a), F. S., with the right to receive monthly benefits at the rate applicable to these options *for the remainder of his or her lifetime*. As a beneficiary under the second option is entitled to monthly payments only *for that portion of the ten-year period* remaining after the death of the member, the reference in the italicized language of §121.091(7), *supra*, to "the monthly benefit provided in this paragraph . . . for his or her lifetime" can only be interpreted as referring to monthly benefits provided by the third and fourth options, *supra*. I am advised that the administrator of the Division of Retirement has so interpreted the statute in question in Administrative Policy Decision No. 2, dated August 30, 1972; and it is a well-settled rule of construction that the administrative interpretation of a statute is entitled to great weight and will not be disturbed by the courts except for the most cogent reasons and where clearly erroneous. *Gay v. Canada Dry Bottling Co.* 59 So.2d 788 (Fla. 1952).

The administrative interpretation is supported by logic and reason. Had the member made the election of the second option himself upon retiring, his surviving spouse or other dependent named as his beneficiary would have been limited to monthly payments for the balance of the ten-year period remaining upon his death. And it is unreasonable to infer that the legislature intended that the surviving spouse or other dependent could draw monthly benefits at the second option rate for the remainder of his or her lifetime merely because of the fortuitous circumstance that the member died before actually retiring and himself making the selection.

Accordingly, your question is answered in the negative.

073-278—August 14, 1973

PUBLIC RECORDS

REPORTS ON APPLICANTS FOR LICENSURE BY DIVISION OF PARI-MUTUEL WAGERING

To: Charles Jackson, Executive Director, Department of Business Regulation,
Tallahassee

Prepared by: Paul W. Lambert, Assistant Attorney General

QUESTION:

Are investigative reports furnished to the Division of Pari-Mutuel Wagering by a national consumer-reporting agency regulated by the federal Fair Credit Reporting Act public records open at all times to public inspection under §§550.021 and 119.01, F. S.?

SUMMARY:

Reports of the Division of Pari-Mutuel Wagering, supplied in connection with license and permit application made pursuant to §550.02, F. S., are public records, according to §119.01, F. S.

If the division uses the services of a consumer-reporting agency to investigate the personal background of applicants for a racing permit or license under §550.02, *supra*, then said reports are subject to the Fair Credit Reporting Act, 15 U.S.C.A., §1681 and may only be made available for inspection in accordance with the Fair Credit Reporting Act.

The Division of Pari-Mutuel Wagering presently uses the services of a national consumer-reporting agency to investigate the personal background of applicants for a racing permit or license under §550.02, F. S. The reports are received by the division and utilized by the division for the purpose of carrying out its statutory prescribed duty to investigate the matters contained in applications for racing permits or licenses.

The Fair Credit Reporting Act, 15 U.S.C.A., §1681, provides that consumer-reporting agencies may furnish consumer reports only under certain circumstances. Such information may be furnished to a governmental subdivision or agency which intends to use the information in connection with a determination of an applicant's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. *See* §1681b(3)(d), *supra*. The act prohibits the use of information supplied by a consumer-reporting agency, pursuant to the act, for any purpose, other than those enumerated. *See* §1681e(a), *supra*.

Section 119.01, *supra*, generally provides that public records shall at all times be open for personal inspection by any citizen. Section 119.011(1), F. S., defines a public record to mean:

... all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

A public record, by law, is one which is required to be kept, or necessary to be kept, in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, or done. *See* *Amos v. Gunn*, 94 So. 615, at 634 (Fla. 1922). By the terms of §119.011, *supra*, a public record also includes those "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency," and not just the official document memorializing the transaction. *See* AGO's 071-243, 071-394, 072-63, and 072-192.

The Division of Pari-Mutuel Wagering is authorized by law to issue licenses for holding, conducting, and operating all race tracks, race meets, and races held in this state, and to require certain information and oaths and to investigate applicants. *See* §550.02(2)(3)(4) and (6), F. S. The division has a legal duty or obligation to investigate licensee applicants to determine their qualifications. *See* §550.02(6), F. S. It would, therefore, appear that reports of such investigation would be within the scope of AGO's 071-243 and 071-394. However, §550.021, F. S. 1969, provides that:

(1) All books, records, maps, documents and papers of the state racing commission, including those filed with said commission as well as those prepared by or for it, shall at all times be open for the personal inspection of any officer of the state or of any county of Florida, or of any official investigative body or committee

My predecessor in office was of the opinion that records made pursuant to §550.02, *supra*, were public records according to §§119.01 and 550.021, *supra*. *See* AGO 053-223, Sept. 1, 1953, Biennial Report of the Attorney General, 1953-1954, p. 543.

This is in keeping with the general rule that all public records are open for

public inspection except records specifically excepted or made confidential by statute. However, §1681t of Title 15, U.S.C.A. reads:

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of the subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

The terms of the Fair Credit Reporting Act apply to state governmental subdivisions and agencies. The Fair Credit Reporting Act places restrictions on the purpose for which a consumer report may be used. Such consumer reports (investigation reports) are prohibited from being released for uses inconsistent with the Fair Credit Reporting Act.

There is, therefore, a conflict between the above-stated section of the Fair Credit Reporting Act and §119.01, *supra*; to wit, according to §119.01, *supra*, the records in question are public; but the Fair Credit Reporting Act places restrictions of disclosure on the records if a consumer reporting agency is utilized to gather the information for the records in question. Therefore, as per §1681t, *supra*, the Fair Credit Reporting Act takes precedence over §119.01, *supra*, but only to the extent of the conflict.

However, the limited disclosure of consumer reports prescribed by §1681t, *supra*, applies only in the instance when the Division of Pari-Mutuel Wagering uses a consumer-reporting agency to investigate the matters contained in the applications for racing permits or licenses. If the division uses its own investigative services and not a consumer-reporting agency, then the investigative reports are public records available for disclosure pursuant to §119.01, *supra*, and are not controlled by the Fair Credit Reporting Act.

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TAXATION

DISTRIBUTORS' COLLECTION FEE FOR MOTOR FUEL TAXES

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: J. Kendrick Tucker, Assistant Attorney General

QUESTIONS:

1. Should the distributors' collection fee authorized by §206.43(1), F. S., be computed on the entire eight-cent gas tax imposed by Part I of Ch. 206, F. S., or should the second gas tax be excluded from this computation pursuant to Art. XII, §9(c), State Const. 1968?
2. If the collection fee is to be computed on the entire eight cents, which of the four gas taxes imposed by Part I of Ch. 206, F. S., are to be charged with this collection fee?
3. If the second gas tax is to be excluded in the computation of the collection fee, should the collection fee be prorated against the remaining three gas taxes imposed by Part I of Ch. 206, F. S.?

SUMMARY:

The second gas tax as defined by §206.41(4) (b), F. S., should be excluded from the computation of the distributors' collection fee authorized by §206.43(1), F. S., because the distributors' collection fee is applicable only to the taxes levied by Part I of Ch. 206, F. S., and because Art. IX, §16, State Const., 1885, as amended, and continued by Art. XII,