

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.

Under these provisions, a city council can, by ordinance, establish or alter the compensation or expense allowances of the mayor or councilmen.

Your question is answered in the negative. Upon the effective date of the Municipal Home Rule Powers Act, October 1, 1973, your question may be answered in the affirmative.

073-277—August 14, 1973

#### RETIREMENT

##### BENEFITS PAYABLE TO BENEFICIARY OF DECEASED MEMBER OF FLORIDA RETIREMENT SYSTEM

To: *John Forbes, Representative, 17th District, Tallahassee*

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

#### QUESTION:

Is the optional form of retirement prescribed by §121.091(6)(a) 2., F. S., available to the beneficiary of a member of the Florida Retirement System who dies after the completion of ten years of creditable service but prior to actual retirement?

#### SUMMARY:

Under §121.091(7)(a), F. S., when a member of the Florida Retirement System dies before retirement after completing ten years of creditable service, the surviving spouse or other dependent may receive monthly payments of death benefits for the remainder of his or her lifetime. The retirement benefits for a ten-year period under §121.091(6)(a) 2., *id.*, are not available as death benefits when a member dies prior to retiring.

The benefits payable under the Florida Retirement System are prescribed in §121.091, F. S. Under subsection (6)(a) of that section, a member who retires must, prior to receiving his first monthly retirement payment, elect whether to take the maximum retirement benefit payable to the member during his lifetime; a decreased retirement benefit which, in the event of his death within ten years after his retirement, is payable to his named "beneficiary" for the balance of such ten-year period; a decreased retirement benefit payable during the joint lifetime of the member and his "joint annuitant" and, upon the death of either, to the survivor for his or her life; or a decreased retirement benefit payable during the joint lifetime of the member and his "joint annuitant" and, upon the death of either, in a reduced amount to the survivor for his or her lifetime.

The "beneficiary" referred to in the second option, *supra*, is the person designated by the member to receive his retirement benefits, in the event of his death, for the balance of the ten-year period. The "joint annuitant" entitled to receive the benefits payable under the third and fourth options, *supra*, is the member's spouse or other dependent. See §121.091(6)(c) and (d), *id.* Provision is made in §121.091(7) *id.*, for "death benefits" payable when a member dies without having retired. If he dies after having completed ten years of creditable service, there is a statutory presumption that he retired as of the date of his death under the appropriate retirement plan (normal, dual, or early) and that he had

. . . 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.