

*Judicial Council.* . . . Upon the *expiration* of the period of his assignment the judge resumes his prior status as a retired judge. . . . (Emphasis supplied.)

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The fact that under Section 6 of the act the retired judge while receiving retirement allowance is declared to be a judicial officer of the state (but without any power as such except while under assignment) should be considered as nothing more than making him eligible for assignment. It would be unreasonable to conclude that while not under assignment he would be subject to the conditions that attach to the status and activities of an incumbent judge. When assigned, he voluntarily assumes the status of a regular judge and would necessarily be governed by those conditions . . . .

073-84—March 23, 1973

### FIRE FIGHTERS

#### LIMITATIONS ON NUMBER OF DUTY HOURS WHICH MAY BE REQUIRED

To: *Lew Brantley, Senator, 8th District, Jacksonville*

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

#### QUESTION:

Within the context of §§167.62 and 167.632, F. S. 1971, dealing with day and night shifts and maximum hours of duty for firemen in certain municipalities, what is meant by the terms "fire emergency" and "general fire alarm"?

#### SUMMARY:

The statutorily prescribed limitations on the number of hours municipal fire fighters within the purview of §§167.62 and 167.632, F. S. 1971, may be required to remain on duty may be extended if there exists an actual uncontrolled destructive fire of such magnitude, intensity, geographical dimensions, or other special characteristics that in order to effect control and extinguishment all or most fire fighting personnel and apparatus are required.

Sections 167.62 and 167.632, F. S. 1971, provide for limitations on the number of hours fire fighters can be required to remain on duty. It must be assumed that the municipalities with which you are concerned fall within the population limitations of these sections and are not excepted from the operation thereof; and, further, that there is nothing in any municipality's charter that would remove it from the purview of said sections or otherwise control and govern its fire department and the members thereof.

Sections 167.62, F. S. 1971, provides that each city having a population of fifteen thousand or more (according to the last federal census) shall provide for two shifts of fire fighters—one shift to be on duty during the day, and the other shift to be on duty during the night. Said section contains a proviso that all firemen, whether on the day or night shift, shall be subject to call "in case of *general fire alarm* during time when a *fire emergency* so requires." (Emphasis supplied.)

Section 167.632, F. S. 1971, provides that fire fighters of municipalities with a population of fifteen thousand or more (according to the most recent federal

census) shall not be required to remain on duty for more than one hundred twenty hours in any two consecutive calendar weeks. The hours during which each shift is to be on duty shall be so divided, either by the shifts alternating from night to day, or otherwise, so that neither shift shall be discriminated against in the number of hours during which the members thereof are required to be on duty. Said section contains a proviso that firemen may be required to remain on duty twenty-four hours per day, but only on alternate days, "except when a *fire emergency* exists." (Emphasis supplied.)

The office of a proviso in a statute is not to enlarge or extend the act of which section it is a part, but is rather to be a limitation or a restraint upon the language which the legislature has employed. A proviso is to be construed strictly and limited to objects fairly within its terms or to qualify or restrain its generalities. *Farrey v. Bettendorf*, 96 So.2d 889 (Fla. 1957); 10B Fla. Digest *Statutes* §228.

Applying this rule of strict construction to the provisos in question, we must conclude that they were not intended to encompass a multitude of situations nor to enlarge their operations to include situations not reasonably contemplated nor intended to be included.

We now come to the question of what is meant by the terms "general alarm" and "fire emergency" as used in §§167.62 and 167.632, *supra*, respectively, inasmuch as the terms are not otherwise defined by Ch. 167, F. S. 1971. Strictly interpreting the term "fire alarm" as it is used in §167.62, *supra*, it is my opinion that it refers to a fire or conflagration of such magnitude, intensity, geographical dimensions, or other special characteristics that in order to effect control and extinguishment all or most fire fighting personnel and apparatus are required. Under these conditions it is customary to call off-duty firemen to the scene of the fire for additional manpower and to provide manning of reserve apparatus.

In applying the same principle of interpretation to the term "fire emergency" as it is used in §167.632, *supra*, it is my opinion that it refers to a situation in which an actual uncontrolled fire exists, as opposed to a false alarm or other circumstances in which a destructive fire is not involved.

Thus, using these terms within the context of §§167.62 and 167.632, *supra*, it is my opinion that the statutorily prescribed limitations on the number of hours municipal fire fighters may be required to remain on duty may be extended if there exists an actual uncontrolled destructive fire of such magnitude, intensity, geographical dimensions, or other special characteristics that in order to effect control and extinguishment all or most fire fighting personnel and apparatus are required. Under these conditions it is customarily expected that a fire department would call its off-duty firemen to the scene of the fire for additional manpower and to provide manning of reserve apparatus.

073-85—March 23, 1973

## PUBLIC DEFENDERS

### PAYMENT OF COSTS OF DISCOVERY PROCEDURES

To: Judge C. Luckey, Jr., Public Defender, Tampa

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

#### QUESTION:

When costs are incurred by the public defenders in making use of the discovery procedures under Rule 3.220(k), CrPR, may the county pay such costs out of the general county operating budget, or must such costs be taxed against the public defender's operating budget?