

Municipal officers and retirement of half pay

Number: AGO 74-185

Date: November 04, 1998

Subject:
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MUNICIPAL OFFICERS--RETIREMENT OF HALF PAY FOR CERTAIN RETIRING OFFICERS

To: Harvey W. Perry, City Clerk, Live Oak

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Will an elected city official who will have completed twenty years of service on or before July 1, 1974, be required to resign prior to that date in order to have the benefit of the pension benefits provided for under s. 121.20, F. S., (1974 Supp.)?

SUMMARY:

Under s. 121.20, F. S., (1974 Supp.) an elected city official who had completed twenty consecutive years of elective service with the city on or before October 1, 1973, or who will have completed such service at the end of the elective term which he was serving on that date, is entitled to the benefits of the noncontributory pension plan provided by s. 121.20(2), F. S., even though the city has another retirement plan that is available to its elected officials.

Your question is answered in the negative.

Under former s. 165.25, F. S. 1971, cities and towns had for many years been required to provide noncontributory pension benefits for their elected officials who served twenty or more consecutive years in an elective office of the city. As amended in 1973 (Ch. 73-129, Laws of Florida), and transferred to s. 121.20, F. S. 1973, effective October 1, 1973, cities are now required to budget funds for and pay noncontributory pension benefits to elected city officials with twenty years of elective service only "where no other plan is available for elected local officials." And in the absence of anything in the statute to indicate that the quoted provision would not apply to persons who had completed twenty consecutive years of elective service or who would have completed such service at the end of the term which they were serving on the effective date of the act, October 1, 1973, I was compelled to conclude in AGO 073-251 that, after October 1, 1973, a city would be required to provide the noncontributory pension benefits to its elected officials only if no other retirement plan was available to them.

The 1974 Legislature amended the statute to provide expressly that the quoted provision

". . . shall not operate to preclude any elected officer from retiring under and receiving benefits

pursuant to the provisions of this section, as it existed prior to October 1, 1973, if such officer had, prior to that date, completed the required twenty (20) years of service or been elected to a term upon the expiration of which, he completes the required twenty (20) years of service." Chapter 74-231, Laws of Florida.

The intent to preserve for elected municipal officials the right to receive the benefits under the noncontributory pension plan that were available to them on the effective date of the 1973 act or that would have become available to them by the end of the elective term being served upon that date is clear. The fact that the statute provides for an effective date of July 1, 1974, has no significance in the context contemplated by your question.