

Sheriff, purchase of retirement benefits for employees

Number: INFORMAL

Date: May 01, 2001

Mr. Kirby D. Owen
Chief Investigator
State Attorney's Office
Sixteenth Judicial Circuit
530 Whitehead Street
Key West, Florida 33040-6547

RE: SHERIFFS--COUNTIES--COUNTY EMPLOYEES AND OFFICERS--RETIREMENT--
PUBLIC FUNDS--purchase of retirement benefits for employees of sheriff's department.

Dear Mr. Owen:

You have contacted this office regarding the purchase of retirement credits for an employee of the St. Lucie County Sheriff's Office. According to the information you have supplied, on October 2, 2000, general operating funds from the sheriff's office were used to purchase five years of previous retirement credit for an employee of that office. The payment was for in-state service with the City of Gainesville, Florida. The cost of purchasing this in-state retirement credit was \$67,026.76. The sheriff approved the payment on the condition that it was a legally authorized payment. You ask whether the statutes support the payment of in-state retirement credit by an employer rather than by the employee.

The statutory provision which appears to control this question is section 121.1122, Florida Statutes, authorizing the purchase of retirement credit for in-state public service. As provided, a member of the Florida Retirement System may purchase up to five years of retirement credit for periods of public employment in this state.[1] Certain limitations and conditions are imposed on the purchase of retirement credits:

"(a) A member is not eligible to receive credit for in-state service under this section until he or she has completed 10 years of creditable service under the Florida Retirement System, excluding service purchased under this section and out-of-state service claimed and purchased under s. 121.1115.

(b) A member may not purchase and receive credit for more than 5 years of creditable service aggregated under the provisions of this section and s. 121.1115.

(c) Service credit claimed under this section shall be credited only as service in the Regular Class of membership and shall be subject to the provisions of s. 112.65.

(d) A member shall be eligible to receive service credit for in-state service performed after leaving the Florida Retirement System only upon returning to membership and completing at least 1 year of creditable service in the Florida Retirement System following the in-state service.

(e) The service claimed must have been service covered by a retirement or pension plan provided by the employer."[2]

Purchase of retirement credits under section 121.1122, Florida Statutes, may be made in the same manner as is authorized in section 121.1115(2), Florida Statutes:

"For each year claimed, the member must pay into the System Trust Fund an amount equal to 20 percent of the member's annual compensation for the first full work year of creditable service earned under the Florida Retirement System, but not less than \$12,000, plus interest at 6.5 percent compounded annually from the date of first annual salary earned until full payment is made. *The employer may pay all or a portion of the cost of this service credit.*" (e.s.)

Thus, the statute recognizes that an employer has the discretion to make such payments. Discussions by this office with the Department of Management Services, Division of Retirement, support the conclusion that an employer may pay the cost of in-state service credit.

Therefore, assuming the particular sheriff's office has a collective bargaining agreement, personnel policy or regulation authorizing such payments, and the payments have been budgeted, the statutes support the payment by a sheriff of in-state service credit for an employee of that office.

I trust that these informal comments will be helpful to you in resolving this issue.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgh

[1] Section 121.1122(1), Fla. Stat.

[2] Section 121.1122(2), Fla. Stat.