

Retirement Boards, members in DROP

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Ms. Elizabeth M. Hernandez
Coral Gables City Attorney
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Dear Ms. Hernandez:

Your office has asked whether the conclusions in Attorney General Opinion 06-32 regarding the service of a firefighter who had entered the Deferred Retirement Option Plan on the firefighters' retirement board as the firefighters' representative would apply to a single retirement system for police and firefighters.

In Attorney General Opinion 06-32 this office stated that a firefighter who has entered DROP but satisfies the definition of "Firefighter" in section 175.032(8)(a), Florida Statutes, is qualified to serve as the firefighters' representative on the firefighters' pension board pursuant to section 175.061(1)(a), Florida Statutes. Section 175.032(8)(a), Florida Statutes, defines "Firefighter" to mean

"any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with the provisions of s. 633.35 and whose duty it is to extinguish fires, to protect life, or to protect property. However, for purposes of this chapter only, "firefighter" also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer as participating in this chapter prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter shall be considered police officers for retirement purposes and shall be eligible to participate in chapter 185. Any plan may provide that the fire chief shall have an option to participate, or not, in that plan." (e.s.)

As this office noted, a firefighter who has entered the Deferred Retirement Option Plan (DROP) program, while considered retired for purposes of pension fund benefits, is still employed by the fire department. Section 175.032(5), Florida Statutes, in defining the Deferred Retirement Option Plan, states that it is a local law plan retirement option in which a firefighter may elect to participate whereby "[a] firefighter may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account *while continuing employment with his or her employer.*" (e.s.)

While the plan considered in Attorney General Opinion 06-32 was a firefighters pension plan under section 175.061(1)(b)1., Florida Statutes, which provided for two firefighter representatives on the firefighters pension board, section 175.061(1)(b)2., Florida Statutes, provides for a combined police and firefighters pension board, stating:

"If a municipality has a pension plan for firefighters and police officers, the provisions of paragraph (a) shall apply, except that one member of the board shall be a firefighter as defined in s. 175.032 and one member of the board *shall be a police officer as defined in s. 185.02*, respectively elected by a majority of the active firefighters or police officers who are members of the plan." (e.s.)

The discussion in Attorney General Opinion 06-32 would appear to be equally applicable to a combined police and firefighters pension board. Thus a firefighter who has entered DROP but satisfies the definition of "Firefighter" in section 175.032(8)(a), Florida Statutes, would be qualified to serve as the firefighters' representative on the police and firefighters' pension board.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl