

OFFICE OF THE ATTORNEY GENERAL



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Honorable M. D. Cunningham
City Clerk
City of Dothan
P. O. Box 2128
Dothan, Alabama 36302

Municipalities - Retirement -
Survivor Benefits

An employee who elects the joint
and survivor spouse option may not
revoke his election after
retirement.

Dear Mr. Cunningham:

The Attorney General is in receipt of your request for
an opinion wherein you pose a question concerning the City of
Dothan's retirement system. The question you pose is:

"...whether an employee who elected to take the
joint and survivor spouse option upon his re-
tirement, may after the effective date of his
retirement, cancel the option."

The City of Dothan's current retirement system is
governed by Act No. 543, Regular Session 1977. This Act in
Section 6 accords eligible individuals to certain service
retirement benefits. In Section 6(8)(b) the joint and
survivor spouse option is set out. This option is designed
to let an eligible member designate his spouse as his
contingent pensioner. In Section 6(8)(b)(c) the method of
electing this option is discussed. This subsection allows an
employee to elect the joint and survivor spouse option if his
election is filed between 30 and 90 days prior to his

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eligibility for retirement. This section specifically states:

During this period preceding the employee-member's eligibility retirement date, the option may be elected, changed or revoked by the pensioner if the spouse is deceased, and/or only with the approval of the Pension Board.

It is the opinion of the Attorney General that Section 6(8)(c) precludes changing the option once the employee-member has retired since no change in election is allowed except that provided by Section 6(8)(d). The basis of this opinion is the clear and unequivocal wording of the statute. This is particularly true in light of Section 6(8)(d) which set out circumstances which would avoid results that would be unduly harsh upon the employee-member. The fact that an employee changes his mind after retirement is not one of those harsh results that the statute attempts to avoid.

Therefore; the answer to your specific question is that it is the opinion of the Attorney General that an employee-member may not cancel the elected joint and survivor spouse option after retirement.

If we may provide you with any further information concerning this matter please feel free to contact this office at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



RICHARD N. MEADOWS
Assistant Attorney General

RNM:mth