

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

BERNICE PRICE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2013-2653
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On May 14, 2013, the presiding officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Bernice Price, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on May 29, 2013. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

**ORDERED**

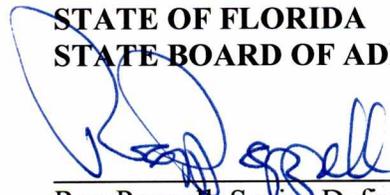
The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner violated the reemployment after retirement provision of Section 121.091, Florida Statutes, when she terminated employment, took a distribution and then was reemployed by an FRS-participating employer before she had been retired for six (6) calendar months. Thus, the

Petitioner by law was required either to terminate employment or to repay the distribution. Petitioner's request of a waiver of the repayment and/or termination requirement hereby is denied.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 4<sup>th</sup> day of June, 2013, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

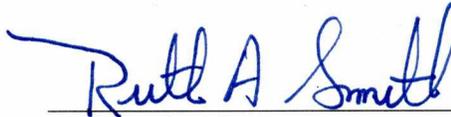
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Bernice Price, *pro se*, [REDACTED] and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 4th day of June, 2013.



Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

BERNICE PRICE,

Petitioner,

vs.

Case No.: 2013-2653

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on March 4, 2013, at the SBA offices, 1801 Hermitage Blvd. Suite 100, Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:       Bernice Price, pro se  
6439 Polk Street  
New Port Richey, FL 34653

For Respondent:       Brandice D. Dickson, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner violated the reemployment after retirement provision of Section 121.091, Florida Statutes and must either repay her distribution or terminate employment.

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone and was unrepresented by counsel. Petitioner testified on her own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, State Board of Administration. Respondent's Exhibits R-1 through R-5 were admitted to the record without objection. After the hearing, Respondent filed Supplemental Exhibit R-6, a transcript of a conversation between Petitioner and a MyFRS Financial Guidance Line counselor. This exhibit is admitted to the record.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner was hired by the Pasco County School Board and elected to enroll in the Florida Retirement System (FRS) Investment Plan effective March 1, 2007.
2. On May 2, 2012, Petitioner terminated FRS-covered employment.
3. Petitioner took a total distribution from her Investment Plan account on September 4, 2012 of [REDACTED]. At that time, she was advised by the MyFRS Financial Guidance Line representative that she could not be reemployed by any FRS-participating employer in any position within six calendar months or before April 1, 2013.
4. Petitioner returned to work with the Hillsborough County School Board, an FRS-participating employer, on November 30, 2012.
5. After returning to work, a possible "re-employment violation" was noted for Petitioner given her return to work date.

6. Respondent SBA verified her retirement and return to work dates, and Petitioner was advised that she was in violation of the re-employment after retirement provision of Section 121.091, Florida Statutes, as she had returned to work with an FRS-participating employer prior to the six calendar month prohibition in the governing statute.

7. Petitioner was advised further that she either had to terminate employment to fulfill the six calendar month prohibition or return the distribution she received from her FRS Investment Plan account.

8. Petitioner filed a Petition for Hearing requesting a waiver of the repayment and/or termination requirement found in the statute.

### CONCLUSIONS OF LAW

9. Sections 121.091(9)(c) and (d), Florida Statutes, state that a retired Investment Plan member cannot be reemployed with an FRS-covered agency until six months after retirement. A member who violates this provision, and the agency that reemploys her, are jointly liable for repaying the invalid distribution.

Section 121.091, Florida Statutes states, in pertinent part:

Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

...

**(9) Employment after retirement; limitation.--**

...

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. **However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination.** However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System.
2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.
3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph.

(d) This subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. **A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.**
2. **A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.**

§ 121.091, Fla.Stat. (2011)(emphasis added)

10. Section 121.021(39), Florida Statutes states:

(39)(a) **“Termination” occurs, except as provided in paragraph (b), when a member ceases all employment relationships with participating employers, however:**

...  
2. **For retirements effective on or after July 1, 2010, if a member is employed by any such employer within the next 6 calendar months, termination shall be deemed not to have occurred.** A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

§ 121.021, Fla.Stat. (2011)(emphasis added)

11. Because Petitioner was reemployed by an FRS-participating employer sooner than six months from her retirement date of September 4, 2012, she is in violation of the reemployment provision in the above-cited statutes. As such, she must either terminate employment or return the distribution she received from her Investment Plan account.

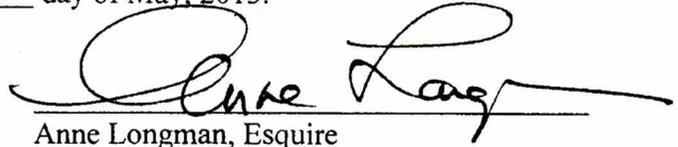
12. Respondent is charged with implementing Chapter 121, Florida Statutes and is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.).

13. It is unfortunate that the consequences of Petitioner taking a distribution when she needed funds are so onerous, but Respondent has no authority to waive the applicable statutory requirements, and so cannot grant Petitioner the relief she seeks in this proceeding.

#### **RECOMMENDATION**

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of May, 2013.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
Tina.joanos@sbafla.com  
Daniel.B Beard@sbafla.com  
(850) 488-4406

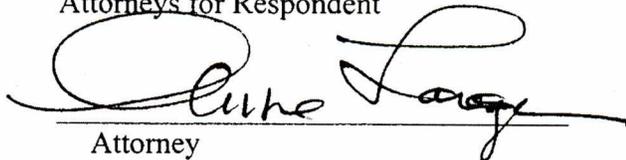
This 14<sup>th</sup> day of May, 2013.

Copies furnished to:  
Via Regular Mail



Petitioner

Via electronic mail:  
Brian A. Newman, Esquire  
Brandice D. Dickson  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
slindsey@penningtonlaw.com  
Attorneys for Respondent



Attorney