

Legal Summary

In an opinion issued today, Corporation Counsel Michael A. Cardozo advised the Mayor that same-sex spouses of members of the City pension systems who have lawfully entered marriages or civil unions in other states should be treated in the same manner as opposite-sex spouses. This means, for example, that same-sex spouses will be eligible to receive accidental death benefits from the retirement systems. The five New York City pensions systems include: the New York City Teachers' Retirement System, the Police Pension Fund, the Fire Department Pension Fund, the Board of Education Retirement System and New York City Employees' Retirement System (NYCERS). (Reporters' Note: NYCERS is the largest system and it generally includes City employees not covered by the other funds.)

In October 2004, the New York State Comptroller Alan Hevesi advised an employee who is a member of the New York State and Local Retirement System (and who wrote to the Comptroller for advice) that if he entered a same-sex marriage that is valid in Canada, the marriage would be recognized for purposes of pension benefits. The Corporation Counsel's opinion agrees with this advice and goes a step further by advising that same-sex civil unions entered in Vermont should also be recognized by the pension systems, as should marriages legally recognized in other countries or in states like Massachusetts.

In March 2004, the Corporation Counsel advised the City Clerk that same-sex marriage is not allowed in New York State under the Domestic Relations Law. This was based on a reading of current New York State law.

This legal advice from March 2004 does not conflict with the opinion issued today. This is because while the earlier opinion said that same-sex marriages cannot be validly entered into in New York State, it did not address the question of recognizing other marriages that were validly entered into in other jurisdictions, such as Canada, Vermont or Massachusetts. Therefore, based on today's opinion, these unions are now recognized for pensions purposes.

The opinion issued today does not address pension benefits for domestic partners. New York State law does not currently allow for domestic partnership to be treated in the same manner as marriage or civil union.

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