



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GROVER SELLERS  
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ATTORNEY GENERAL

Honorable Bayne Satterfield, Commissioner  
Office of Firemen's Pension Commissioner  
P. O. Box 1062  
Austin, Texas

Dear Sir:

Opinion No. 0-6835

Re: Whether a fireman, who has reached twenty years of service after going in the Armed Forces, is eligible to be granted a Service Certificate in accordance with Sec. 6, Art. 6243e, Title 109, V.A.R.C.S.?

We have your letter of September 9, 1946, asking for an opinion from this department, based upon the following facts, to-wit:

"A participating fireman served approximately 18 years in his fire department as an active fireman. Soon after completing the 18 years' service he entered the armed service of our Nation. While serving in the armed service he completed his 20 years and he is still in the armed service. He has not been an active member of the fire department since he completed his 18 years of service. The question is whether he is eligible to be granted a Service Certificate in accordance with the provisions of Section 6 of the Act-- Article 6243e. Applicant has not reached the age of 55 years. He entered the armed service during the War and National Emergency."

Section 6, of Article 6243e, V.A.R.C.S., to which you refer, Acts of 1945, 49th Legislature, p. 58, Ch. 40, Sec. 1, reads as follows:

"On and after the 1st day of April, A.D. 1939, any person who has been duly appointed and enrolled, and who has attained the age of fifty-five (55) years and who has served actively for a period of twenty (20) years in some regularly organized fire department in any city or town in this state now within or that may come within the provisions of this Act, in any rank, whether as wholly paid, part paid or volunteer firemen, shall be entitled to be

retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100.00) per month; such average monthly salary to be based on the monthly average of his salary for the five (5) year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars (\$50.00) or less per month or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars (\$25.00). Notwithstanding any other provision of this Act, it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty-five (55) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue a certificate showing the completion of such service and showing and certifying that such fireman, when reaching the age of fifty-five (55) years, will be entitled to the retirement and other applicable benefits of the Act; provided further, that when any fireman shall have been issued such certificate he shall, when reaching retirement age, be entitled to all the applicable benefits of the Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate. Provided further, that in order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement."

Incidentally, this particular Section of said Article 6243e was construed in Opinion No. 0-6583 by Judge Speer to you on or about May 22, 1945, in the following language:

"This Section repeats verbatim Section 6 of Chapter 125, Acts of the Regular Session of the 45th Legislature, and adds that **portion** of the above quotation which we have **underscored** for convenience sake." (The **Under-scored portion being** the last half of the Section quoted beginning with "Notwithstanding any other provision," etc., and ending with "up to the time of their retirement.")

"We think it is plain from the specific language of the newly added matter to Section 6 that the Legislature intended that any eligible and qualified fireman, who shall have completed twenty years of service before reaching the age of fifty-five years, would be entitled to the certificate showing such service, whether such completion is before or after the effective date of Senate Bill 89, provided it is on or after the 1st day of April, A. D. 1939."

Section 21, of Article 6243e, on the computation of length of service, provides that:

"In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service.  
\* \* \* \* " (underscoring ours)

As was said in this Department's Opinion No. 0-4625 to you in July, 1942:

"It is our opinion that Section 21 of the Act (being Sec. 16, Art. 6243e, Title 109, as codified under Vernon's Annotated Revised Civil Statutes of the State of Texas, Vol. 17, 1946 Cumulative Annual Pocket Edition) under consideration does not distinguish the status of a fireman who resigned from one who takes a leave of absence. Therefore, where a fireman resigned, or secures a leave of absence for the purpose of entering the armed forces of the Nation during war or National emergency and does so enter the armed forces, the time he serves in the army during such period of war or National emergency is considered continuous service for retirement purposes."

In view of the cited portion of the Firemen's Relief and Retirement Act, and the various opinions of this Department heretofore rendered on this and kindred phases of the questions propounded by you and which we have quoted herein, we are of the opinion that a fireman who has reached twenty (20) years of service, after going into the armed forces, before reaching the age of fifty-five (55) years, is eligible, under the facts you give us, to be granted a Service Certificate as provided under Article 6243e, and the Sections hereinabove set out.

Hon. Bayne Satterfield, page 4

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Yours very truly,

ATTORNEY GENERAL OF TEXAS

By s/John L. Wroe  
John L. Wroe  
Assistant

JLW:LJ:wc

APPROVED NOV 1, 1946  
s/Grover Sellers  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman