



**THE ATTORNEY GENERAL
OF TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

October 1, 1947

Hon. Bayne Satterfield,
Firemens' Pension Commissioner,
Capitol Station,
Austin, Texas

Opinion No. V-393

Re: The period to be covered by
contributions of cities to
the Firemens' Relief and Re-
tirement fund in accordance
with S. B. 84, 50th Leg.

Dear Sir:

You propound to this Department for an opinion
the following question:

"Senate Bill No. 84 enacted during the
regular session of the Fiftieth Legislature
provides that cities having paid firemen who
pay into the Firemens' Relief and Retirement
Fund, shall donate an equal amount into that
fund. The Act is effective on May 13, 1947.

"This question arises: Should such
cities pay an amount into the Fund at the
end of the year 1947 equal to the amount the
firemen paid in during the entire year or
should it pay into the Fund an amount equal
to the amount the firemen paid into the Fund
from May 13, 1947 to the end of the year. In
other words is the Act retroactive to January
1, 1947, insofar as the city paying into the
Fund is concerned, or should it begin as of
May 13, 1947."

Senate Bill No. 84 merely amended House Bill No.
258, chapter 125 of the 45th Legislature, Regular Session
(1937) by adding a new section designated Section 10a. This
added section is as follows:

"All cities having full paid firemen
where Firemen's Relief and Retirement Funds

have been created under the provisions of this Act, shall annually contribute and appropriate to such fund an amount equal to the annual contributions made by such fully paid firemen under the provisions of this Act, which such contributions shall not exceed the sum of three (3%) per centum of the Fire Department's annual payroll, and such cities shall deposit the same to the credit of the Firemen's Relief and Retirement Fund to be used with other moneys in said fund for the benefits provided for under the provisions of this Act."

This amendment was caused by the holding in *American Alliance Insurance Co. v. Board of Insurance Commissioners*, 126 S.W. (2d) 741 (writ refused) upsetting for constitutional reasons the scheme of the original Act for financing the Firemen's Relief and Retirement System. A new method became necessary and it was the intention of the Legislature that Section 10a should serve the purpose.

Upon the effective date of Senate Bill No. 84, Section 10a became an integral part of House Bill No. 258 of the 45th Legislature. This is not only the usual legal effect of an amendment adding or subtracting a section or provision, but it is accentuated by the repeated references in Section 10a to "this Act" meaning of course House Bill No. 258 as thus amended. This conclusion is further accentuated by the indisputable fact that under the holding in the decision above cited, the purpose of the original bill would have failed for the want of a necessary plan of financing the system.

When the amended Act is read and construed as a whole in accordance with the familiar rules of statutory construction, Senate Bill No. 84 is not obnoxious to Section 16 of Article 1 of the Constitution forbidding ex post facto and retroactive laws. Further, it appears the Legislature contemplated that the amended Act should be construed and administered in every respect as originally contemplated save only as to the method of financing the undertaking. It follows, we think, that under Senate Bill No. 84 after its effective date, all cities coming within the purview of the statute should annually contribute and appropriate to such fund an amount equal to the annual payments made by firemen under the Act, regardless of whether such payments were made

before or after the effective date of Senate Bill No. 84. This is indispensable to a proper result as contemplated by the Legislature.

This construction of Senate Bill No. 84 does, of course, permit the amendment to be predicated upon past acts or fact situations as a basis for administering the Act. But this is permissible and in nowise offends any constitutional limitation. *Byrd v. City of Dallas*, 6 S.W. (2d) 738. 50 Am. Jur. p. 493, § 476.

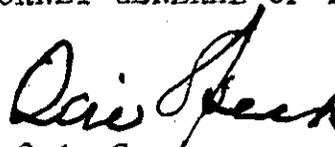
SUMMARY

House Bill No. 258 of the 45th Legislature, Regular Session, as amended by Senate Bill No. 84 of the 50th Legislature, Regular Session, requires all cities coming within its purview to appropriate such an amount as will equal the annual payments made during the current year by firemen to the fund created, whether such payments were made before or after May 13, 1947, the effective date of Senate Bill 84. *Byrd v. City of Dallas*, 6 S. W. (2d) 738. 50 Am. Jur. p. 493, § 476.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



Ocie Speer
Assistant

OS:wb

APPROVED:



FIRST ASSISTANT
ATTORNEY GENERAL