



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

**ERIC DANIEL
ATTORNEY GENERAL**

August 16, 1948

Hon. G. F. Williams
Firemen's Pension Commissioner
Austin, Texas

Opinion No. V-660

Re: Eligibility of a city Firemen's Pension Fund to share in the State appropriation when the city refuses to contribute matching funds.

Dear Sir:

Your letter requesting an opinion upon the above titled subject matter is as follows:

"Senate Bill No. 84 enacted during the regular session of the Fiftieth Legislature added Section 10A to H. B. 258, Regular Session Forty-Fifth Legislature and provides that cities having paid firemen who pay into the Firemen's Relief and Retirement Fund, shall donate an equal amount into that fund. The Act was effective on May 13, 1947, and your department ruled, Opinion No. V-393, that the cities should make this payment into the fund retroactive to January 1, 1947.

"QUESTION

"Should the city refuse to match the payments made into the fund by the firemen, would the Firemen's Disability and Retirement Fund of that City still be eligible to receive their pro rata share of the Appropriation?"

The Firemen's Relief and Retirement Fund was set up by House Bill No. 258 of the 45th Legislature at its Regular Session. The Act provided for the financing of the fund.

In the case of American Alliance Insurance Company v. Board of Insurance Commissioners, 126 S.W. (2) 741, it was held that the provisions providing funds and revenues for the Firemen's Relief and Retirement Fund by levying occupation or license taxes of 2 per centum of all gross premium receipts levied and assessed against insurance companies was unconstitutional.

By Senate Bill No. 84 the 50th Legislature amended House Bill No. 258 by the addition thereto of Section 10a providing as follows:

"All cities having fully paid firemen where Firemen's Relief and Retirement Fund has 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 monies in said fund for the benefits provided for under the provisions of this Act."

The emergency clause for Senate Bill No. 84 stated the holding in American Alliance Insurance Company v. Board of Insurance Commissioners as creating the necessity for immediate passage.

As you state, House Bill 258, as amended by Senate Bill 84, does provide that cities having fully paid firemen who pay into the Firemen's Relief and Retirement Fund, shall contribute annually an equal amount to that fund.

The current appropriation to the Firemen's Pension Commissioner reads: "5. Firemen's Relief and Retirement Fund, \$300,000.00" for each year of the biennium. (50th Leg., R. S., p. 842).

There is no qualification or limitation whatsoever attached to this item 5, nor is there anything

limiting or qualifying it to be found in the general provisions accompanying the appropriation for State Departments and Agencies in which this appropriation is found. These considerations impel us to the view that the State appropriation is unqualifiedly dedicated to the specific purpose for which it was made, and that the Legislature assumed that the cities concerned would comply with the statute in matching Firemen's contributions. So long as there is a specific appropriation as we now have, such firemen would be entitled to receive their pro rata share of the appropriation regardless of the failure of the city to match the Firemen's Contribution.

SUMMARY

Where paid firemen have suffered their salary deductions as contributions to the Firemen's Relief and Retirement Fund under H. B. 258 of the 45th Legislature (Reg. Ses.) they are eligible to receive their prorata share of the State appropriation notwithstanding the city has refused to match their salary contributions as contemplated by law.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant

OS:wb

APPROVED:

Price Daniel
PRICE DANIEL
ATTORNEY GENERAL