



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

August 31, 1950

PRICE DANIEL  
ATTORNEY GENERAL

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

Opinion No. V-1101

Re: Legality of counting  
years during which a  
fireman drew disability  
compensation as years  
of continuous active  
service toward retire-  
ment.

Dear Sir:

Your request for an opinion from this office reads,  
in part, as follows:

"We desire the opinion of your office regard-  
ing the legality of a local Pension Board in a cer-  
tain City granting a Certificate of Eligibility to a  
Fireman which requires twenty years of active  
service and 55 years of age.

"The Fireman in question entered the Fire  
Department in 1929, retired on disability in 1943,  
drew disability compensation through 1944-45-46  
and a part of 1947, then returned to active service  
on regular Fire Department pay and is now re-  
questing a Certificate of Eligibility for twenty  
years of service and 55 years of age. It would be  
necessary that he count these years that he has  
been drawing disability compensation as con-  
tinuous service to be eligible for the certificate.

"The question is - Would this man be per-  
mitted to count 1943 through a part of 1947 as con-  
tinuous active service? "

Article 6243e, V.C.S., contains the provisions of the  
Firemen's Relief Pension Fund. Section 6 of this article estab-  
lishes the requirements which must be met before a fireman  
qualifies to receive the monthly age and service retirement  
pension. Section 6 reads, in part, as follows:

"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 one or more regularly organized Fire Departments . . . shall be entitled to be retired . . ." (Emphasis added)

Section 21 of Article 6243e, V.C.S., contains the standards for computing the length of service required for retirement. This section reads, in part, as follows:

"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 . . ."

The wording of the statute is clear. Any time spent in the armed forces is considered continuous service, but this is the only absence for over a year that is considered continuous service. All other absences for over a year, including disability absences, since they are not excepted, shall be deducted as "time out of service."

Section 7 of Article 6243e specifically covers retirement for disability. After covering in detail the methods of qualifying for disability pay, the section then reads as follows:

". . . provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability." (Emphasis added)

It is an accepted rule of statutory construction that a statute is passed as a whole and not in parts or sections. Consequently, each part or section should be construed in connection with every other part so as to produce a harmonious whole. 2 Sutherland on Statutory Construction (3rd Ed. 1943) 336. Applying this rule of construction to a reading of Section 7 on disability pensions, and Section 6 on age and service pensions, as parts of Article 6243e on the Firemen's Relief Pension Fund, it is apparent that the Legislature meant to distinguish between these two types of pensions. The fact that Section 7 on disability pensions specifically requires restoration to active service following the disability

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indicates that the time spent receiving disability pension pay is not considered active service as required in Section 6.

In the case of State ex rel King v. Board of Trustees of Firemen's Pension Fund of Kansas City, 192 Mo. App. 583, 184 S.W. 929 (1916), involving a construction of the word "service" as used in a city firemen's retirement program, the court held that service meant "the act of serving, the labor performed or duties required of a fireman."

Furthermore, Section 26 of Article 6243e defines "active firemen" or "active members" as "all paid firemen who receive regular salaries as firemen and such partly paid or volunteer firemen as in each calendar year answer at least twenty-five (25) per cent of all fire alarms and at least forty (40) per cent of all drill or practice calls."

From the facts submitted, it does not appear that the applicant herein would come within either of the active categories specified above during the years when he received the disability pension. We agree with your conclusion in this respect, and your question is accordingly answered in the negative.

#### SUMMARY

Years during which a fireman drew disability compensation should not be considered years of active service for the purpose of qualifying for firemen's age and service monthly retirement pension.

Yours very truly,

APPROVED:

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