



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

December 28, 1953

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

Opinion No. S-118

Re: Eligibility of a re-
tired Volunteer Fire-
man to again partici-
pate in the Firemen's
Pension System by se-
curing employment as
a paid fireman.

Dear Mr. Williams:

Your request for an opinion of this office is as follows:

"We desire the opinion of your office regarding a man who has been drawing a pension as a volunteer fireman being hired as a paid man and resuming participation in the Pension System on a paid basis.

"One of the smaller towns participating in the Firemen's Pension System has a man who was retired after having served more than twenty years and reaching the age of 55. He was paid the maximum volunteer's pension of \$25.00 a month for almost two years. The City has now hired this man as a paid fireman. His pension has, of course, been stopped and he has started contributing into the Pension Fund on a percentage of his salary.

"It is the opinion of this Department that once a man has reached retirement age and has been retired on pension, he cannot again start participating in the Pension Fund. It is our opinion that should he be employed again by the Fire Department, his pension should just be discontinued while he is drawing a salary. It seems to be the opinion of the local Pension Board that this man can pay into the Fund now on his salary and after a five-year period be re-tired on the basis of a paid man, his pension being figured on one half of his monthly salary

for the five-year period just prior to his second retirement.

"Your opinion is necessary due to the conflicting view of this Department and the local Pension Board. Please advise if the man can start contributing again after once having been on pension."

In effect you have asked for our opinion on the eligibility of a retired volunteer fireman to return and again participate in the Firemen's Pension System by receiving employment as a paid fireman and thus, after five additional years of service as such, being able to again retire but this time on the basis of a fully paid fireman.

We are of the belief that the intent and purpose of the Legislature in creating the Firemen's Relief and Pension Fund (Article 6243e, Vernon's Civil Statutes) was two-fold: First, to reward and compensate the firemen throughout the State who have performed dangerous and extra hazardous duties protecting others' lives and property through many years of service; and second, to induce men to enter active service as firemen and to retain their service as such. We also have the further consideration that the Act provides what is generally known and considered as a "Firemen's Pension"; our pension laws are generally liberally construed in favor of the pensioner. Board of Firemen's Relief & Retirement Fund Trustees of Houston v. Marks, 237 S.W.2d 420-5, (Tex.Civ.App. 1951, reversed on other grounds 242 S.W.2d 181, 27 A.L.R.2d 965); 40 Am. Jur. 963, Pensions, Sec. 4.

With these principles in mind, we will now look to the wording of the applicable portions of the Act (Article 6243e, as amended by Chapter 82, Acts of the 53rd Legislature, 1953, page 352) which read as follows:

"Section 6. 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 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 fireman, 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) per month, except as hereinafter provided; 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) 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). 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 this 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. Provided further, that any regularly organized 'full paid' fire department in any city or town in this State now within or that may come within the provisions of this Act, may, upon a majority vote of said Board of Trustees, increase the maximum pension to One Hundred Fifty Dollars (\$150) per month." (Emphasis supplied)

Section 7 of Article 6243e, supra, after providing for retirement in cases of disability suffered while on active duty, continues as follows:

"Section 7. . . . 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 supplied.)

"Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a certificate, and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance. . . ." (Emphasis supplied)

"Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city or town for payment for such duty so performed."

In studying the pertinent sections above, we find that the Act nowhere disqualifies nor prohibits a person from returning into service as a fireman after he has elected to retire. The act is specific in providing that the retiring paid fireman is entitled to receive the pay or pension based on his pay during the last five (5) years of service. If the volunteer fireman has retired, but returns and serves another five (5) years in a full pay capacity and contributes into the Fund during all of that time, he is entitled to his pension based on the pay received by him during his last five (5) years of service.

It is our opinion, under the facts as given us in your letter, that a volunteer fireman who elected to retire, and drew a pension as such, may return, contribute to and benefit from the Fund by reason of again accepting employment as a paid fireman.

SUMMARY

A volunteer fireman who has elected to retire and who has drawn a pension as a retired fireman, is eligible to return, contribute to and participate in the Firemen's Pension System by securing employment as a paid fireman; on subsequent retirement, his pension is based on the pay received by him during his last five (5) years of service. Sec. 6, Art. 6243e, V.C.S.

Yours very truly,

APPROVED:

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