



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 16, 1959

Mrs. Marie Hudson
Fireman's Pension Commissioner
702 Tribune Building
Austin, Texas

Opinion No. WW-726

Re: Whether a Fire Department joining the State Firemen's Pension System must have 100% participation and if an age limit can be set for individual firemen to participate in the Pension Program.

Dear Mrs. Hudson:

You have requested an opinion as to whether a Fire Department joining the State Firemen's Pension and Retirement Program is required to have all firemen participate in the program.

House Bill 258, Acts of the 45th Legislature, Regular Session, 1937, Chapter 125, page 229, codified as Section 10, Article 6243e of Vernon's Civil Statutes, allowed the individual fireman to make his choice as to his participation in the Pension and Retirement Program.

"Sec. 10. Within sixty (60) days after this Act takes effect each fully paid fireman and each part paid fireman whose salary or compensation is Fifty Dollars (\$50) or more per month and each part paid fireman whose salary or compensation is less than Fifty Dollars (\$50) per month and each active volunteer fireman in the employ of any such city or town or enrolled in the fire department of any such city or town, who desires himself or his beneficiaries, as hereinafter named, to participate in such Fund or the benefits therefrom as by this Act provided, shall file with the Secretary-Treasurer of

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the Board of Firemen's Relief and Retirement Fund Trustees of that city or town a statement in writing under oath that he desires to participate in the benefits from such Fund, . . ."

Section 12 of House Bill 68, Acts of the 55th Legislature, Chapter 275, Page 617, codified as Section 10B, Article 6243e of Vernon's Civil Statutes, amended Section 10 of Article 6243e. This amendment recognized the privilege of a fireman not to participate in the program if he was a member of a department which had an existing retirement program at the time this amendment took effect.

". . ."

"Any fireman who is a member of a department which had an existing Firemen's Relief and Retirement Fund prior to the effective date of this amending Act and who has elected and does elect not to participate in such Fund, shall not be liable for any salary deduction provided by this Act; but each person who shall hereafter join a fully paid fire department which then has a Relief and Retirement Fund shall file a statement in writing, in the manner hereinabove provided by this section, upon joining such department and shall thereafter participate in the contributions to and benefits from such Fund, as provided by this Act, unless such new fireman shall be rejected or excused therefrom by the Board of Trustees upon a determination by the Board that such person is not of sound health. . . ."

It is our opinion that all firemen, who are members of a fully paid fire department, must participate in the Firemen's Relief and Retirement Fund unless they, as individual members of a fire department with a retirement program, had elected not to participate in that retirement program before Section 10-B, Article 6423e, Vernon's Civil Statutes, became effective.

Your second question as to whether an age limit can be set precluding firemen over the age of forty (40) from participating in the Firemen's Relief and Retirement Program is

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answered by Section 10-B of Article 6243e, as set out above. Under Section 10-B, an individual who joins a fully paid fire department, covered by this Act, with a Relief and Retirement Program, is required to participate in the Program unless such fireman is rejected by the Board of Trustees for the reason set out in the statute.

In our opinion this would not allow a fire department to exercise its discretion in excluding individuals on the basis of age.

Section 10-B of Article 6243e of Vernon's Civil Statutes restricts its coverage to fully paid fire departments which necessarily restricts the coverage of this opinion to fully paid fire departments, although as indicated a member of any fire department with a retirement system in effect at the time this statute went into effect who now works for a fully paid fire department participating or that is now electing to participate in the Firemen's Pension and Retirement Fund has the option as set forth in this opinion.

SUMMARY

All firemen, who are members of a fully paid fire department, and are covered by this Act, must participate in the Firemen's Relief and Retirement Fund established under Section 10-B of Article 6243e, Vernon's Civil Statutes, unless they, as individuals, elected not to participate in a retirement fund available to them through their fire department prior to May 22, 1957.

A fire department cannot exclude an individual who joins that department from participating in the Firemen's Relief and Retirement Fund on the basis of age.

Yours very truly,

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APPROVED:

OPINION COMMITTEE
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