



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

May 28, 1975

The Honorable Hal H. Hood
Firemen's Pension Commissioner
503-F Sam Houston State Office Bldg.
Austin, Texas 78701

Opinion No. H- 618

Re: Whether the Firemen's
Relief and Retirement Fund
is subject to the Provisions
of the Employee Retirement
Income Security Act of 1974.

Dear Mr. Hood:

You have requested our opinion regarding the applicability of the Employee Retirement Income Security Act of 1974 to the Firemen's Relief and Retirement Fund.

The Employee Retirement Income Security Act, 29 U.S.C. §1001, (1974 Supp.), et seq., imposes liability upon the fiduciary of a pension plan for errors or omissions in its administration, but permits the administrators of a covered plan to purchase liability insurance. 29 U.S.C. §§1104-1110. Specifically, you ask whether these liability provisions of the Act apply to the Board of Firemen's Relief and Retirement Fund Trustees of the City of Amarillo.

The federal Act declares, in 29 U.S.C. §1003(b), that:

The provisions of this subchapter shall not apply to any employee benefit plan if:

- (1) such plan is a governmental plan (as defined in section 1002(32) of this title). . .

"Governmental plan" is defined in section 1002(32) as:

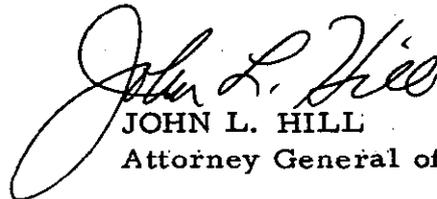
. . . a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

It seems clear that the Firemen's Relief and Retirement Fund falls within the definition of "governmental plan." Article 6243e, V. T. C. S., creates a special retirement and disability pension fund for the benefit of firemen who are employed by the participating municipalities. Revenue for the Fund is derived from a tax levied against fire insurance companies, and from contributions by the municipalities and by participating firemen. The Fund is administered in each city by a board composed of certain officials, together with a particular number of firemen and resident citizens. See 45 Tex. Jur. 2d, Pensions, § 25. We hold therefore that, since the Firemen's Relief and Retirement Fund is a "governmental plan," it is specifically excepted from the coverage of the Employee Retirement Income Security Act of 1974.

SUMMARY

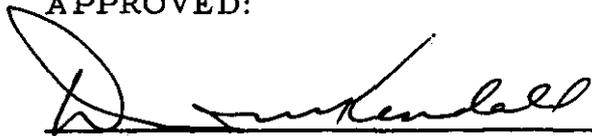
The Firemen's Relief and Retirement Fund is a "governmental plan" and thus not subject to the provisions of the Employee Retirement Income Security Act of 1974.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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