



The Attorney General of Texas

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

Opinion No. MW-119

**Re: Eligibility for membership in
the Pension Fund of a person who
has reached his 35th birthday, but
has not reached his 36th birthday.**

Dear Commissioner Hood:

You have asked our opinion in construing article 6243e, section 10A-3(i) which provides that no person is eligible for membership in the city Fireman's Relief and Retirement Fund if he is more than thirty-five (35) years of age at the time he first enters service as a fireman. The question presented is whether a person who is subject to this statute is "more than thirty-five (35) years of age" the day after his 35th birthday or not until he becomes thirty-six (36) years of age.

In construing this statute, we feel it significant that under article 1269m, section 9, dealing with fireman's civil service, the requirement is made that no person is eligible for a beginning position with a Fire Department who has reached his thirty-sixth (36th) birthday.

While it is arguable that an individual is more than thirty-five (35) years of age the day after his 35th birthday, the requirements of the civil service law suggest that what the legislature intended by the phrase "more than thirty-five (35) years of age" in article 6243e, section 10A-3(i) is age thirty-six rather than thirty-five years and one day.

S U M M A R Y

For the purposes of article 6243e, section 10A-3(i), a person is not more than thirty-five (35) years of age until he reaches his thirty-sixth (36th) birthday.

Very truly yours,

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