



The Attorney General of Texas

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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-267

Re: Firemen's pension benefits

Dear Mr. Hood:

You have requested our opinion regarding the proper method under article 6243e, V.T.C.S., of calculating benefits to be paid to a firefighter who is eligible for both disability and service retirement. You do not inquire about and we do not address constitutional issues.

Section 7F of article 6243e, V.T.C.S., describes a procedure whereby the board of trustees of a local firemen's relief and retirement fund:

may modify or change in any manner whatsoever any of the benefits provided... and may modify or change in any manner whatsoever any of the eligibility requirements for such benefits.

Pursuant thereto, the trustees of the Firemen's Relief and Retirement Fund of the city of Beaumont adopted certain changes in the basis for determining benefits for both service and disability retirement.

Under the rules adopted, a fireman becomes eligible for a service retirement benefit if he is at least 55 years of age and has completed 20 years of service. A fireman qualifies for a disability retirement benefit:

if he becomes disabled from any cause whatsoever for either physical or mental reasons before he meets the requirements to qualify for a [service] retirement benefit. (Emphasis added).

Thus, in order to qualify for a disability benefit, a firefighter must become disabled prior to that date on which he has both reached the age of 55 and has accrued 20 years of service. Eligibility for either type of benefit is determined by which set of circumstances occurs first.

Section 9 of article 6243e provides, in pertinent part:

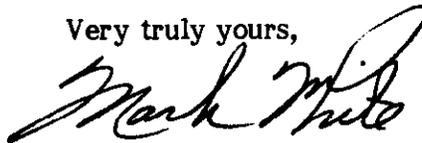
If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a Fund under the provisions of more than one section of this Act, such fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid.

Although this provision allows a firefighter who qualifies for both service and disability benefits to elect the most favorable type of retirement, the rules adopted by the Beaumont Board of Trustees do not permit the firefighter to qualify for both kinds of benefit. When an individual qualifies under one retirement formula, he is thereafter ineligible to participate in the other. As a result, the relevant portion of section 9 is not applicable to your inquiry.

S U M M A R Y

Under rules adopted by the board of trustees of the Firemen's Relief and Retirement Fund of the city of Beaumont, whether a firefighter receives benefits under "service" or "disability" retirement provisions depends upon the provisions under which he first became eligible for retirement.

Very truly yours,



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