



**THE ATTORNEY GENERAL  
OF TEXAS**

October 25, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable George Pierce  
Chairman  
Committee on Urban Affairs  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78769

LO-88-122

Dear Mr. Pierce:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X  
Attorney General of Texas

JAM/bc  
Enclosure



**THE ATTORNEY GENERAL  
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Texas House of Representatives  
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Dear Representative Pierce:

You ask whether pension benefits may be set pursuant to the Fire and Police Employee Relations Act, article 5154c-1, V.T.C.S., when the city's fire and police pension plan is governed by article 6243f, V.T.C.S.

Article 6243f provides for the creation of a Firemen and Policemen's Pension Fund and designates the composition of the seven-member board of trustees. Insofar as is pertinent to your inquiry article 6243f provides

that once such pension system becomes operative in any city, any right or privilege accruing to any such member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. . . . These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. (Emphasis added.)

Article 5154c-1, section 5(a), provides that when any city or political subdivision adopts the Fire and Police

Employee Relations Act, the "fire fighters and/or policemen shall have the right to organize and bargain collectively with their public employer as to wages, working conditions, and all other terms and conditions of employment." The act provides for arbitration, the effect of awards made through arbitration, and their review and enforceability.

Section 20(c) of article 5154c-1 states:

Nothing contained in this Act shall be construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' or policemen's salaries, pensions, or retirement plans, hours of work, conditions of work, or other emoluments; this Act shall be cumulative and in addition to the benefits provided by said statutes and ordinances.

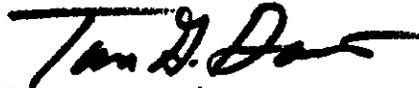
Attorney General Opinion JM-926 (1988) concluded that the Austin Fire Fighter's Relief and Retirement Fund established pursuant to article 6243e.1, V.T.C.S., was not subject to any control by the city over the funds nor were such funds city property. Bolen v. Board of Firemen, etc., 308 S.W.2d 904 (Tex. Civ. App. - San Antonio 1957, writ ref'd) was cited in support of this conclusion. In Bolen, as here, the matter of the authority of the board under 6243f was in question. In Bolen the court stated:

It is true that the city pays money into this trust fund, but once it is paid into the fund the city loses control over it and it no longer belongs to the city. The law just happens to name the mayor and two councilmen as members of the Board, but it might just as well have named someone else. The fact that the mayor and two councilmen happen to be members of the Board does not make the trust funds property belonging to the city. The City Treasurer just happens to be named as ex officio treasurer of the pension fund, but this fact, again, does not give the city, as such, any control over the funds or make them city property. (Emphasis added.)

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Article 6243f expressly provides that the Board of Trustees of the Firemen and Policemen's Pension Fund shall "have complete and independent control over said Pension Fund." It follows that pension benefits are to be set pursuant to article 6243f rather than article 5154c.

Yours very truly,



Tom G. Davis  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

TGD/SW/bc

Ref.: ID# 3046  
RQ-1362