



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Ms. Helen L. Campbell
Office of Fire Fighters' Pension
Commissioner
3910 S. IH-35, Suite 235
Austin, Texas 78704

Letter Opinion No. 92-11

Re: Authority of Fire Fighters' Pension
Commissioner under V.T.C.S. article
6243e.3 with regard to volunteer fire
fighters pension contracts (ID# 12647)

Dear Commissioner Campbell:

You inform us that in 1985 the Office of the Fire Fighters' Pension Commissioner approved a contract between the city of Deer Park and the Deer Park Volunteer Fire Department regarding participation in the pension system created under the Texas Statewide Volunteer Fire Fighters Retirement Act. See V.T.C.S. art. 6243e.3. Under the act, certain political subdivisions may elect to participate in the pension system and make contributions to the fund on behalf of volunteer fire fighters serving their areas. In communities that have elected to participate, volunteer fire fighters or their beneficiaries are entitled, upon completion of five years of qualified service, to retirement, disability, and death benefits. *Id.* §§ 3 - 6. The pension system is funded with contributions from (1) the participating governing bodies (at least \$12 for each month of a fire fighter's qualified service); (2) the state (up to one-third the amount of contributions by governing bodies); and (3) from any other source. *Id.* § 2(c), (d), (e).

Claims for benefits from the fund are submitted to local boards of trustees whose members are appointed for two-year terms. *Id.* §§ 7(a), 22. The local board decides the claim. *Id.* § 7. The claimant may appeal a local decision, first, to the Fire Fighters' Pension Commissioner (the commissioner), and second, to an appointed statewide board of trustees. *Id.* Additionally, the commissioner is given oversight of the distribution of benefits under the act. *Id.* § 19(m).

The act provides for a retirement annuity payable in monthly installments. *Id.* § 3(a). The monthly retirement annuity is computed by multiplying the governmental body's average monthly contribution to the retirement fund over the fire

fighter's term of qualified service by a number determined by the legislature. As currently written, section 3(b) of the act provides that an eligible retiree's annuity is six (6) times the governmental body's average monthly contribution. You state that prior to September 1, 1984, the level was three (3) times the average monthly contribution.

Your office has interpreted a provision of the Deer Park contract providing retirement benefits to eligible volunteer fire fighters who retired prior to September 1, 1984, to require payment at double the level allowed by section 3(b) of the act. You state that the contract permitted these retirees to receive benefits at six times the average monthly contribution when they should have received only three times that amount. You ask (1) whether such a provision is legal, (2) whether the commissioner may rescind this provision and advise local governments that additional benefits of this type must be provided on a local basis, and (3) whether the commissioner may forbid other cities from inserting a similar provision in their retirement contracts.

We must advise at this point that this office does not interpret contracts in the opinion process. The rights and obligations of the parties to a contract with a governmental body must in the first instance be determined by the governmental body in consultation with its legal counsel. Thus, we can express no opinion about the specific terms of the Deer Park contract. However, it is clear that a contract which provides for computation of retirement benefits at a rate greater than that supplied by article 6243e.3 is unauthorized. *See Foster v. City of Waco*, 255 S.W. 1104, 1106 (Tex. 1923) ("Neither the [municipal] corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized [by the charter or statute creating the city], or by some legislative act applicable thereto"). Further, section 19(a) of article 6243e.3 states that the commissioner "may not administer any fire fighters' pension plan other than the pension system[s] created by this Act" and V.T.C.S. article 6243e. The plain import of this language is to impose on the commissioner the duty to administer the volunteer fire fighters' pension system in strict compliance with article 6243e.3. Thus, the commissioner has no authority to administer a pension contract which grants retirement benefits at a rate requiring computation with a multiplier greater than the multiplier authorized by the act.

You next ask whether the commissioner may rescind the portion of the contract in question. A contract which is made in violation of an express statute is, as a general rule, void and unenforceable. *See 14 TEX. JUR. 3d Contracts* § 141 (1981) (and authorities cited therein); *see also Foster*, 255 S.W. at 1106; *City of*

Teague v. Sheffield, 26 S.W.2d 417, 418-19 (Tex. Civ. App.--Waco 1930, no writ). Furthermore, since the commissioner has no power to administer a pension plan which violates article 6243e.3, there is no requirement that an invalid contract provision be formally rescinded. Again, we emphasize that we express no opinion regarding the validity of any of the provisions of the contract which prompted your request.

Finally, you ask whether the commissioner may forbid other cities from making similar contract provisions. Article 6243e.3 requires participating governmental bodies to make monthly contributions to the Fire Fighters' Relief and Retirement Fund on behalf of volunteer fire fighters. The legislature has set a minimum monthly contribution (\$12), but leaves it to the discretion of the governing body to make a greater contribution. V.T.C.S. art. 6243e.3, § 2. Thus, we do not believe the commissioner may dictate to governmental bodies the level of benefits they provide to volunteer fire fighters. However, we do believe the commissioner, consistent with her duty to oversee the distribution of benefits, must decline to administer a contract which calls for payment of benefits in violation of article 6243e.3, V.T.C.S.

S U M M A R Y

A contract entered into pursuant to V.T.C.S. article 6243e.3 may not provide for the payment of a monthly annuity which is computed at a rate greater than the rate specified in section 3(b) of the act. The Fire Fighters' Pension Commissioner may not administer a contract which calls for payment of benefits in violation of article 6243e.3. The commissioner may not dictate to governmental bodies the level of benefits they provide to volunteer fire fighters under the act.

Yours very truly,



Steve Aragón
Assistant Attorney General
Opinion Committee