



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 23, 1996

Ms. Helen Campbell
Fire Fighters' Pension Commissioner
3910 South IH-35, Suite 235
Austin, Texas 78704

Letter Opinion No. 96-054

Re: Whether a volunteer fire department may withdraw from the statewide volunteer fire fighters' pension system if the department does not intend to transfer its assets and liabilities from the pension system to another pension plan (ID# 38628)

Dear Ms. Campbell:

Section 12, V.T.C.S. article 6243e.3, authorizes a local volunteer fire department to withdraw from the statewide volunteer fire fighters' pension system, but if it does so, the department must transfer its assets and liabilities to its new pension plan. You indicate that a volunteer fire department wishes to withdraw from the statewide pension system, but the department has no replacement pension plan. Instead, the department will purchase insurance for its volunteer fire fighters. You ask whether, in this circumstance, the department may withdraw from the statewide pension system. We conclude that article 6243e.3, section 12 does not permit it.

You explain that, prior to July 1, 1991, the Preston Volunteer Emergency Services department (the "Preston department") had no pension plan for its volunteer fire fighters. Effective on that date, however, the Preston department joined the statewide volunteer fire fighters' pension system established under the Texas Statewide Volunteer Fire Fighters' Retirement Act, V.T.C.S. article 6243e.3. Now, less than five years after joining the statewide pension system, the Preston department has decided, by vote of a majority of its fire fighters, to withdraw from the statewide pension system. The Preston department does not propose to replace participation in the statewide pension system with participation in an alternative pension plan; rather, the Preston department proposes to purchase an insurance policy covering the volunteer fire fighters.¹

¹Under the statewide pension system, a fire fighter's retirement benefits do not vest until the fire fighter has completed five years of "qualified" service, that is, the fire fighter has been a member in good standing of a fire-fighting unit with at least ten active members and that stages at least two two-hour drills each month. V.T.C.S. art. 6243e.3, § 1(1) (defining "qualified service"). Additionally, each of the fire-fighting unit's active volunteer fire fighters must be present at over 40% of the drills and 25% of the fires. *Id.*

The Preston department's letter attempting to withdraw from the statewide pension system, a copy of which you included in your letter, indicates that, over four years after joining the statewide pen-

You believe that, because the Preston department has not designated or created an alternative pension plan in which to participate, it may not withdraw from the statewide pension system. You cite section 12(a), V.T.C.S. article 6243e.3, which permits a fire department that merged an existing pension plan with the statewide pension system to withdraw from the statewide pension system within five years after the merger. The withdrawal must be by majority vote of the volunteer fire fighters who serve the department.² Also, upon withdrawal, the statewide pension system must transfer the fire department's allocated assets and liabilities "to the plan chosen to replace" the statewide pension system.³ Nothing in article 6243e.3 defines the term "plan," as used in section 12(b) of the article.

When the Preston department joined the statewide pension system, it did not have an existing pension plan that it merged with the statewide pension system; rather, its participation in the statewide pension system, as we understand it, represented the first time it offered a pension plan to its volunteer fire fighters. Because V.T.C.S. article 6243e.3, section 12 expressly applies only to a department that merged an existing pension plan with the statewide pension system, section 12 does not appear to apply. Nevertheless, you cite a rule of the statewide pension system's board of trustees⁴ that makes section 12 applicable:

Entities which have not been in any pension system prior to entering [the statewide pension system established by V.T.C.S. article 6243e.3] follow[] the same procedures as entities in [another pension plan] . . . on voting to enter the pension system and follow the same rules and regulations.⁵

Although you do not ask about the validity of this rule, we believe it is valid. We note that the statewide pension system's board of trustees is required to adopt rules and regulations necessary to administer the pension fund.⁶ We further note the legislature's

(footnote continued)

sion system, none of its volunteer fire fighters have vested in the plan and only one has received disability payments from the plan. Possibly, the volunteer fire fighters of the Preston department chose to withdraw from the statewide pension system to participate in some program with more immediate benefits.

²V.T.C.S. art. 6243e.3, § 12(a).

³*Id.* § 12(b).

⁴*See id.* § 20 (creating state board of trustees).

⁵Rules and Regulations of The Texas Statewide Volunteer Fire Fighters' Retirement Fund rule B.6 at 5 (June 30, 1995).

⁶V.T.C.S. art. 6243e.3, § 21(b).

directive that every volunteer fire fighter “must be a member of a solvent pension plan.”⁷ On the other hand, we note that article 6243e.3 provides no specific procedures pertaining to a fire department that wishes to join or has joined the statewide pension system without previously participating in a pension plan. For example, the article does not describe the method by which the fire department may join the system—despite the legislative directive that every volunteer fire fighter must be a member of a solvent pension plan.⁸ Additionally, article 6243e.3 provides no method by which a fire department without a pre-existing pension plan may withdraw from the statewide pension system.⁹ Given the legislature’s explicit requirement that every volunteer fire fighter be a member of a solvent pension plan, the rule is consistent with legislative intent and closes an unintended loophole in the statute.

The rule thus provides a means by which a fire department without an existing pension plan may join the statewide pension system. Consequently, the rule precludes any argument that section 12 does not apply to the Preston department because the Preston department did not have an existing pension plan and was not authorized to join the statewide pension system. Likewise, the rule directs that a fire department that had no pension system before it joined the statewide pension system, such as the Preston department, must withdraw from the statewide system in accordance with section 12.

We must consider, therefore, whether section 12 precludes a fire department that has not selected a pension plan to replace the statewide pension system may withdraw from the statewide pension system. (We assume the fire department satisfies all other requirements of section 12, that is, the withdrawal is in accordance with a majority vote of the volunteer fire fighters and occurs within five years of the date the fire department commenced participating in the statewide pension system.) Subsection (b) clearly contemplates that the fire department’s assets and liabilities, accumulated before and during its participation in the statewide pension system, will be transferred to a “plan.” While the legislature has not defined “plan,” it has distinguished between a “plan” and “insurance” in V.T.C.S. article 6243e.3, section 13. Moreover, the legislature requires, in section 15(a), that every volunteer fire fighter be a member of a solvent pension plan. The legislature does not provide an alternative for those fire departments that choose to provide insurance coverage for their fire fighters instead of a pension plan.

We accordingly conclude that a fire department may withdraw from the statewide pension system established under V.T.C.S. article 6243e.3 only if the fire department has designated or created a separate pension plan to replace the statewide pension system.

⁷*Id.* § 15(a).

⁸*See id.* § 10.

⁹*See id.* § 12.

Because the Preston department apparently has not designated or created an alternative pension plan, it may not withdraw from the statewide pension system.

S U M M A R Y

A volunteer fire department may withdraw from the statewide pension system established under V.T.C.S. article 6243e.3 only if the fire department has designated or created a separate pension plan to replace the statewide pension system. Of course, the fire department also must withdraw in accordance with a majority vote of its volunteer fire fighters and within five years of joining the statewide pension system.

Yours very truly,


Kimberly R. Oltrogge
Assistant Attorney General
Opinion Committee