



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bayne Satterfield
Firemen's Pension Commissioner
State Capitol Building
Austin, Texas

Dear Sir:

Opinion No. O-4481

Re: Paid firemen paying into pension fund
as volunteer firemen, under H. B. 258,
Acts of the 45th Legislature, Regular
Session, 1937.

Your letter of March 26, 1942, requests the opinion
of this department upon the following question, involving the
provisions of H. B. 258, Acts of the 45th Legislature, Regular
Session:

"Will it be permissible for a paid fireman to pay
into the fund on the basis of a volunteer fireman with the
expectation of receiving benefits as provided for volunteer
firemen if and when he makes application for same."

Section 10 of Article 6243e, the Act of the Legisla-
ture referred to by you, provides as follows:

"Within sixty (60) days after this Act takes effect
each fully paid fireman and each part paid fireman whose
salary or compensation is Fifty Dollars (\$50) or more per
month and each part paid fireman whose salary or compensation
is less than Fifty Dollars (\$50) per month and each active
volunteer fireman in the employ of any such city or town or
enrolled in the fire department of any such city or town,
who desires himself or his beneficiaries, as hereinafter
named, to participate in such Fund or the benefits therefrom
as by this Act provided, shall file with the Secretary-
Treasurer of the Board of Firemen's Relief and Retirement
Fund Trustees of that city or town a statement in writing
under oath that he desires to participate in the benefits
from such Fund, giving the name and relationship of his
then actual dependents and shall therein authorize said
city or town or the governing body thereof to deduct not
less than one per centum nor more than three (3) per centum,
the exact amount thereof to be determined by the vote of

the fire department of which such person is a member, from his salary or compensation if a wholly paid or part paid fireman whose salary or compensation is more than Fifty Dollars (\$50) per month, but if a part paid fireman whose salary is less than Fifty Dollars (\$50) per month, or if a volunteer fireman, the statement shall include a promise and an obligation to pay to said Board of Trustees not less than Three Dollars (\$3) nor more than Five Dollars (\$5) per annum to be paid semi-annually, the exact amount thereof to be likewise determined by vote of the fire department of which such person is a member. Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city or town. Failure or refusal to make and file the statement provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Fireman's Relief and Retirement Fund. If any such member shall elect not to participate in such Fund, he shall not be liable for any salary deduction nor to pay as herein provided."

It is apparent from a reading of this section of the act that a fully paid fireman is given the election to participate in the benefits provided by the act only as such; that, likewise, a partly paid fireman whose salary is less than \$50. per month, and the volunteer fireman, are given the election to participate only as such; that the fully paid fireman cannot elect to participate in the benefits of the act as a volunteer or partly paid fireman, and conversely, the volunteer or partly paid fireman receiving compensation less than \$50. per month cannot elect to participate in the fund as a fully paid fireman. Under the provisions of the act, participation in its benefits must be made on the basis of the status occupied in fact by the fireman.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Approved Apr. 12, 1942

(Signed) GROVER SELLERS
First Assistant Attorney General

By (Signed) R. W. FAIRCHILD
Assistant

Approved Opinion Committee
By B.W.B. Chairman