



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

October 18, 1957

Honorable Henry Wade  
District Attorney  
Dallas, Texas

Opinion No. WW-283

Re: Can the employees of the  
Dallas City-County Depart-  
ment of Public Welfare be  
brought into the County's  
Retirement System?

Dear Mr. Wade:

You have requested an opinion of this office on  
the following questions:

"1. Under the applicable  
constitutional provisions and laws,  
are full time employees of the Dallas  
City-County Department of Public Wel-  
fare employees of Dallas County ac-  
tually full time employees of Dallas  
County?

"2. If the answer to the  
foregoing question is in the negative,  
are full time employees of the Dallas  
City-County Department of Public Wel-  
fare employees of Dallas County 'in  
a position normally requiring not  
less than nine hundred (900) hours  
per year'? (There are about 1,980  
normal working hours in a year for  
these employees and 990 of these  
hours are paid for by County funds.)

"3. Is it legal for the em-  
ployees of the Dallas City-County  
Department of Public Welfare to be  
brought into the Dallas County Retire-  
ment System on either the basis of  
(a) all of their pay, or (b) half of  
their pay?

"4. Is it legal for employees  
of the Dallas City-County Department  
of Public Welfare to be brought into

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the Retirement System under any circumstances?"

Subdivision (b) of Section 62 of Article XVI of the Constitution of Texas provides:

"(b) Each county shall have the right to provide for and administer a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the county; provided same is authorized by a majority vote of the qualified voters of such county and after such election has been advertised by being published in at least one newspaper of general circulation in said county once each week for four consecutive weeks; . . ."

The Constitution of Texas sets up a method by which counties may provide for a County Appointive Officers and Employees Retirement, Disability and Death Compensation Fund, and likewise there is a constitutional provision providing that incorporated cities of the State of Texas have the power and authority to provide a system of retirement.

Section 51-e, Article III of the Constitution of the State of Texas provides:

"Sec. 51-e. Each incorporated city and town in this State shall have the power and authority to provide a system of retirement and disability pensions for its appointive officers and employees who have become disabled as a direct and proximate result of the performance of their duties, or have passed their sixty-fifth birthday, or have been employed by such city or town for more than twenty-five (25) years and have passed their sixtieth birthday, when and if, but only when and if, such system has been approved at an election by the qualified voters of such city or town entitled to vote on the question of issuance of tax supported

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bonds; provided that no city or town shall contribute more than the equivalent of seven and one half (7½) per centum of salaries and wages of the officers and employees entitled to participate in its pension system, and that said officers and employees shall contribute a like amount; and this Amendment shall not reduce the authority nor duty of any city or town otherwise existing."

The Constitution provides that each city or county may provide for its employees a Benefit Retirement Program.

However, there is no provision for a joint City-County employee retirement program. The Dallas City-County Department of Public Welfare is jointly controlled by the City Council and Commissioners' Court. The budget of this department is approved by the Commissioners' Court and by the City Council, and the city and county each pays half of the total cost for the Public Welfare Department's operation. The employees of the Dallas City-County Department of Public Welfare cannot be considered either county or city employees due to the reason that neither the City Council nor the Commissioners' Court has complete supervision and control over the Department.

If either the County authorities or City authorities were in complete control of the Public Welfare Department, then those employees engaged in rendering services in connection with the Department of Welfare would clearly come within the Retirement Benefits for City and/or County employees as set out in the Constitution.

Therefore, it is our opinion that since there is no constitutional provision for a joint City-County employees retirement program, then the County has no authority to bring the employees of the Dallas City-County Department of Public Welfare into the County Retirement System. Hence, we answer questions 1, 2 and 3 in the negative.

In reply to question 4, there is no way for the employees of the Dallas City-County Department of Public Welfare to be brought into the County Retirement System unless the Department of Public Welfare becomes solely controlled by the County governing authority.


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SUMMARY

The Constitution of Texas provides for both County and City employee retirement benefits; however, there is no constitutional provision for employees who are supervised and employed by a joint City-County Agency, and, therefore, as long as there is joint control over this Department the employees of the Dallas City-County Department of Public Welfare are not eligible to be brought into the County Retirement Program.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Linward Shivers  
Assistant

LS:wam

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman  
Ralph R. Rash  
Houghton Brownlee

REVIEWED FOR THE ATTORNEY GENERAL  
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