



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 18, 1961

Mrs. Marie Hudson
Firemen's Pension Commissioner
Austin, Texas

Opinion No. WW-1168

Re: Questions relative to
the construction of Sec-
tion 6a of Article
6243e Vernon's Civil
Statutes.

Dear Mrs. Hudson:

Your request for an opinion presents the
following questions:

- 1.) Whether the additional pension benefits provided for in Section 6a of Article 6243e automatically became applicable on the date that Section 6a became law, or do the provisions of Section 6a become applicable only when a qualified fire department votes to include the additional benefits in pension payments.
- 2.) Whether Section 6a of Article 6243e is retroactive in its application and effect.

Article 6243e of Vernon's Civil Statutes is known as the Firemen's Relief and Retirement Fund Act. Section 6a of the Act was added by amendment in 1957. This section reads in part as follows:

"Sec. 6A. Any fireman who is a member of a 'full paid' fire department and who shall be entitled to be retired under the provisions of Section 6 of this Act, and who shall retire under Section 6 or Section 7 or Section 7A with additional time of service and of participation in a Fund after the date upon which he became entitled to be retired or with more than twenty-five (25) years

of service and of participation in a Fund, shall be entitled to be paid from the Firemen's Relief and Retirement Fund of the city or town in which he last served, in addition to any other benefits provided by this Act, an additional monthly pension allowance which shall be computed as follows:

. . .

"If any person shall die from any cause whatsoever and if, at the time of death, such person shall have retired with or shall have been entitled to retire with an additional monthly pension allowance as hereinabove provided by this section, and if such deceased shall leave surviving him a widow who married the deceased prior to his retirement, . . .

"Provided, however, that the provisions of this section shall not be applicable to any particular relief and retirement fund until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this section within that Relief and Retirement Fund."

The 1957 amendments to Article 6243e were enacted as H.B. 68, 55th Texas Legislature, Regular Session, 1957. That portion of the caption to H.B. 68 most pertinent to our discussion is as follows: ". . . and by adding thereto a new section numbered Section 6A, providing an additional monthly pension allowance for members of 'full paid' fire departments who have additional service after being entitled to retire or after twenty-five (25) years of service; or for widows of such firemen, and providing that the provisions of such Section shall become applicable to a Fund only upon the vote of the members of such Fund; . . ." (Emphasis added) The plain and unambiguous language employed by the Legislature in both the caption and the text of the section expresses the legislative intent that the provisions are to become applicable to a particular Relief and Retirement Fund only upon the election by the majority of the

participating members of such fund to include the provisions of the section within their respective Relief and Retirement Funds. "Where a statute is plain and unambiguous, it will be enforced according to its words." Anderson v. Penix, 138 Tex. 596, 161 S.W.2d 455 (1942). Also, the case of Harris County v. Smith, 187 S.W. 701 (Civ.App. 1916), held that the intent of the Legislature as to a law is to be determined primarily from the plain and ordinary import of the language employed.

Therefore, it is our opinion that no rights to the additional benefits specified in Section 6a vest in the participating members or their survivors until the election requirement set out within the section is satisfied.

However, the question remains whether these additional benefits are available to retired firemen, meaning those persons no longer on active service with the department, subsequent to such an election in view of the fact that these persons were not active and were receiving pension payments at the date of the election. It is our opinion that those persons who have "retired" and who have received retirement benefits prior to the election discussed above have no right to participate in or otherwise receive benefits under Section 6a of Article 6243e, Vernon's Civil Statutes.

It must be noted that one of the primary requisites for any fireman to be entitled to any benefits under Section 6a is that he is to be a member of a "full paid" fire department. It is evident that a person who has retired from active duty and who is receiving a retirement pension does not have the required employment status. Also, there is no language in the section which indicates that upon election the benefit provisions of Section 6a are to become retroactive in their effect and application. On the contrary, if there is any doubt as to the intent of the Legislature in this respect, such doubt must be resolved against the precept that the benefit provisions of the Section are retroactive in their application and effect. The case of McCain v. Yost, 278 S.W.2d 398 (Civ.App. 1955), held that the Legislature is ordinarily presumed to intend that an enactment shall operate prospectively and not retrospectively. In addition the Supreme Court case of State v. Humble Oil and Refining Company, 141 Tex. 40, 169 S.W.2d 707 (1943) held that a

statute will not be applied retrospectively, even where there is no constitutional impediment against such application, unless it appears by the fair implication derived from the language used therein that it was the intention of the Legislature to make the statute applicable to both the past and present. Thus, the rule of construction appears to be that . . . a statute is generally held to operate prospectively unless a contrary construction is required by the terms. 39 Tex.Jur. 55, Statutes, Sec. 27.

When H.B. 62, 57th Leg., R.S., 1961, becomes effective in November, 1961, as Section 25a of Article 6243e, Vernon's Civil Statutes, the issue as to the retrospective effect of Section 6a should be permanently resolved.

That portion of the Bill which will constitute Section 25A provides as follows:

"Sec. 25A. After a fireman who is a member of a 'full paid' fire department at the termination of his active service shall terminate his active service, the amounts of all allowances and benefits which such fireman or his beneficiaries may thereafter become entitled to receive from a Firemen's Relief and Retirement Fund shall be computed on the basis of the schedule of allowances and benefits in effect for such Firemen's Relief and Retirement Fund at the time of the termination of such fireman's active service." (Emphasis added)

The fact that the 57th Legislature passed H.B. 62 clearly indicates that the Legislature was cognizant of the fact that it was perhaps possible to construe the present pension benefit provisions of the Firemen's Relief and Retirement Fund Act as being retroactive in their application and effect. It is our opinion that H.B. 62 clarifies the law on this point.

S U M M A R Y

The provisions of Section 6a of Article 6243e, Vernon's Civil

Honorable Marie Hudson, page 5 (WW-1168)

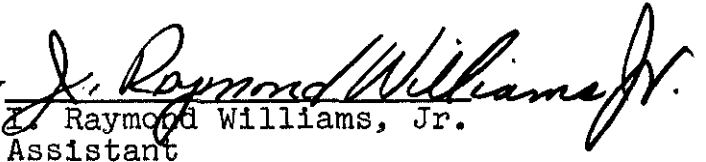
Statutes, are not applicable to any particular Firemen's Relief and Retirement Fund of any city or town until after an election has been held and the majority of the participating members of the respective funds have elected to include the provisions in this Section within their respective Relief and Retirement Funds. The provisions of Section 6a are not retroactive in their application and effect. This is to say that in order for a person or his survivors to be entitled to the benefits under Section 6a, the election to include the provisions of the Section must occur prior to the time such person terminates his active service as a fireman with a "full paid" fire department.

Yours very truly,

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Attorney General of Texas

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By


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APPROVED:

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