



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

April 8, 1965

Mrs. Marie Hudson
Firemen's Pension Commissioner
1010 Sam Houston Building
Austin, Texas

Opinion No. C- 417

Re: Whether, under the facts stated, a fireman should be required to contribute a per cent of sick leave and vacation pay into the Pension Fund.

Dear Mrs. Hudson:

In your letter requesting an opinion from this office, you submit certain facts which we quote as follows:

"The Firemen's Pension Board of Corpus Christi, Texas, has requested that I secure your official ruling on a matter involving Section 6 of the Firemen's Pension Law.

"After a fully paid Fireman has completed twenty (20) years of Service before reaching the age of 55 years he can leave the Fire Department for other employment but continue to pay into the local Pension Fund the same percentage of contribution as paid by the other Firemen on his average monthly salary for the five year period prior to his resignation.

"A Fireman resigning from the Department with twenty (20) years of service will have accumulated sick leave and vacation pay, which in some cases can amount to as much as \$3,000.00 to \$4,000.00. Neither the local Board nor this office permit this sick leave and vacation pay to be included in his average monthly salary."

With regard to these facts you ask the following question which we quote as follows:

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"We would like your official opinion as to whether or not a Fireman so resigning or retiring on age and service should be required to contribute a percent of sick leave and vacation pay into the Pension Fund."

Article 6243e, Vernon's Civil Statutes, is popularly known as the Firemen's Relief and Retirement Fund Act. The provisions of Section 6 of Article 6243e, Vernon's Civil Statutes, most pertinent to our discussion read as follows:

"Sec. 6

". . . Any person who has been duly appointed and enrolled and who has attained the age of fifty-five (55) years, and who has served actively for a period of twenty (20) years in any rank, whether as wholly paid, part-paid or volunteer fireman, . . . shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one half (1/2) of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month, except as hereinafter provided; such average monthly salary to be based on the monthly average of his salary for the five year period preceding the date of such retirement; . . . Notwithstanding any other provision of this Act, it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty-five (55) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman, when reaching the age of fifty-five (55) years, will be entitled to the retirement and other applicable benefits of this Act; . . ."

It is your administrative ruling, as well as that of the Board of Firemen's Relief and Retirement Fund Trustees of Corpus Christi, Texas, that sick leave and vacation pay is not authorized to be included in computing a fireman's average monthly salary under the provisions of Section 6, Article 6243e, Vernon's Civil Statutes. This ruling is a valid exercise of the rule making powers of the Boards of Firemen's Relief and Retirement Fund Trustees and the Firemen's Pension Commissioner granted in Section 3

and Section 19 respectively of Article 6243e, Vernon's Civil Statutes. We quote the pertinent provisions of these respective sections as follows:

"Sec. 3

". . . such Board (Board of Firemen's Relief and Retirement Fund Trustees) shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the 'Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas.' . . ."

"Sec. 19

". . . Such Commissioner (Firemen's Pension Commissioner) shall have authority to examine the accounts and records of the various Boards of Trustees; shall make rules and regulations not otherwise provided herein; . . . shall hear, determine, and/or review all appeals herein provided and shall do any and all things within his power and as he may deem necessary to facilitate and assist in the purpose for which such Firemen's Relief and Retirement Fund is created."

Since sick leave and vacation pay is not included in computing a fireman's average monthly salary, it is our opinion that a fireman, who resigns, after completing twenty years of service before reaching the age of fifty-five, is not required, under the provisions of Article 6243e, to contribute a percent of sick leave and vacation pay into the Firemen's Relief and Retirement Fund.

S U M M A R Y


Under the submitted facts, a fireman is not required by the provisions of Article 6243e, Vernon's Civil Statutes, to contribute a percentage of sick leave and vacation pay into the Firemen's Relief and Retirement Fund.

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Very truly yours,

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APPROVED:
OPINION COMMITTEE

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