



**THE ATTORNEY GENERAL  
OF TEXAS**

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ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

May 7, 1968

Mrs. Marie Hudson Winters  
Firemen's Pension Commissioner  
Sam Houston Building  
Austin, Texas 78701

Opinion No. M-229

Re: Authority of firemen to  
discontinue participation  
in the State Firemen's Re-  
lief and Retirement System  
in whole or in part, and  
related questions.

Dear Mrs. Winters:

You have requested an opinion from this office regarding the participation of the Sulphur Springs Fire Department in the State Firemen's Relief and Retirement Fund. You asked the following questions:

"1. In a Fire Department composed of some volunteer firemen and some paid firemen can the paid men vote to discontinue paying into the Fund.

"2. Should the entire Fire Department - both volunteer and paid firemen - vote on the question.

"3. Can the paid men and volunteers vote that the paid men discontinue paying into the Fund but the volunteers continue to participate.

"4. Can a few paid men continue to pay into the Fund and a few discontinue to pay? or should it be an 'all or none' proposition.

"5. If a few paid men do stay in the Fund then is each new fireman hired not required to participate."

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Since each of these questions relate to participation or non-participation in the Fund, they will not be treated separately here.

In regard to these questions, you are advised that under Article 6243e, Section 10A-2(f) of Vernon's Civil Statutes, all persons who have become firemen in Sulphur Springs since August 28, 1967, must participate in the Fund. The statute says:

"Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act, provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees." (Emphasis added.)

As to members of the Sulphur Springs Fire Department who were appointed before the above-quoted amendment became effective, Subdivision (g) of Section 10A-2 requires that these persons continue participation in the Fund. The statute says:

"Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this

amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment."

Firemen who were not members of the Fund before the 1967 amendment became effective have a choice as to participation under Section 10 of Article 6243e. That statute says:

"Sec. 10. Each city or town in which a firemen's Relief and Retirement Fund has been created prior to the time at which this amending section of this Act takes effect and which has a part-paid or volunteer fire department, or the governing body of such city or town, shall henceforth be authorized to deduct from the salary or compensation of each fireman who is participating in such Fund when this amending section takes effect, or to collect from each such fireman, whatever amount shall have been authorized, or agreed to, by the filing by such fireman, with the Secretary-Treasurers of the Board of Firemen's Relief and Retirement Fund Trustees of such fireman's city or town, of 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 authorizing said city or town or the governing body thereof to deduct not less than one (1) 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 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 herein 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 Firemen'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." (Emphasis added.)

Section 10A of the above statute applies to "all cities having fully paid firemen," as does Section 10A-2, whereas Section 10B applies to cities with firemen in a "'full paid' fire department." We are not at liberty to hold these terms synonymous in order to hold that Section 10A-2 does not apply to the City of Sulphur Springs. We must presume that the Legislature carefully chose its words, and we must give effect to the distinctions in its language.

The statutes are not clear as to the status of volunteers. However, it is the opinion of this office that volunteers in the Sulphur Springs Fire Department should be allowed to continue participation in the manner prescribed above in Section 10 of Article 6243e of Vernon's Civil Statutes. We conclude that by its amendments to the statute, the Legislature evidently intended to require all fully paid firemen to be members of the State Firemen's Relief and Retirement Fund except those who were not members of the Fund at the time the 1967 amendment became effective. Volunteers, part-paid firemen, and those fully paid but not members of the Fund at the time of the 1967 amendment were given an individual election as to participation in the Fund.

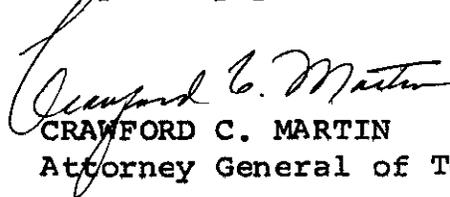
#### S U M M A R Y

Fully paid firemen of Sulphur Springs who were appointed after August 28, 1967, must be

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a member of the State Firemen's Relief and Retirement Fund. Fully paid firemen who were members of the Fund before the 1967 amendment must continue their participation in the Fund. Persons who were fully paid firemen, but were not members of the Fund at the time the 1967 amendment became effective may elect to participate on an individual basis. Volunteers and part-paid firemen also have an individual election as to participation.

Very truly yours,



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APPROVED:  
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