



# The Attorney General of Texas

August 31, 1982

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Honorable George N. Rodriguez, Jr.  
El Paso County Attorney  
Room 201 City-County Building  
El Paso, Texas 79901

Opinion No. MW-510

Re: Alteration of city firemen, policemen and fire alarm operators pension fund

1607 Main St., Suite 1400  
Dallas, TX. 75201-4709  
214/742-8944

Dear Mr. Rodriguez:

You asked whether a city's firemen, policemen and fire alarm operators pension fund which operates a policemen's division and a firemen's division may be altered to make changes in the operation of the policemen's division without making changes in the firemen's division or vice versa.

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El Paso, TX. 79905-2793  
915/533-3484

1220 Dallas Ave., Suite 202  
Houston, TX. 77002-6986  
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You state that the city of El Paso has a Firemen, Policemen and Fire Alarm Operators Pension Fund established pursuant to article 6243b, V.T.C.S. This fund has a separate policemen's division and a firemen's division as provided in section 16 of the article. The number of policemen making contributions to the fund far exceeds the number of firemen making contributions to the fund. From time to time modifications have been made as provided in section 10A. All of the changes must sequentially comply with provisions of article 6243b, section 10A(b) which provides:

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Lubbock, TX. 79401-3479  
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(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

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(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

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(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the departments at the time the change becomes effective and those who enter the department thereafter; and

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured. (Emphasis added).

Article 6243b, section 10A(b)(3) states clearly that the policemen's division of a city's firemen, policemen and firefighters pension fund may not be changed without a uniform change in the firemen's division.

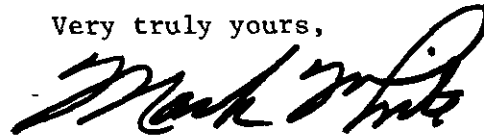
It has been suggested that one division of the fund might be placed at a disadvantage simply because it has fewer members. The law, however, is clear. We note that the State Pension Review Board has the power and duty to conduct a continuing review of public retirement systems, to conduct studies of potential problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems, to provide information and technical assistance on pension planning to public retirement systems on request, and to recommend policies, practice, and legislation to public retirement systems and appropriate governmental entities. V.T.C.S. Title 110B, Public Retirement Systems, §11.202 (1981 Pamphlet).

#### S U M M A R Y

Neither division of the firemen, policemen, and fire operators fund established pursuant to

article 6243b, V.T.C.S., may be changed without a uniform change in the other division.

Very truly yours,



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