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July 10, 2000

The Honorable John Cornyn
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OPINION COMMITTEE

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OPEN RECORDS DIVISION

RQ-0256-JC

Dear General Cornyn:

An inquiry has been made of my office regarding civil service benefits at a certain municipality. Specifically, may a city, such as the City of Fort Worth, operating under Chapter 143 of the Texas Local Government Code ("Civil Service Act") deny a fire fighter or police officer a line of duty illness or injury retirement pension under Section 143.073 (b) of the Local Government Code because the City has a general retirement or pension fund, created by Ordinance, which applies to all City employees and is not captioned or designated as a "fire fighter's or police officer's pension fund" to be used solely for fire fighters and police officers?

Section 143.073, Texas Local Government Code, reads as follows:

Section 143.073. Line of Duty Illness or Injury Leave of Absence.

- (a) A municipality shall provide to a fire fighter or police officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.
- (b) At the end of the one-year period, the municipality's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the fire fighter's or police officer's salary is reduced below 60 percent of the person's regular monthly salary and **the municipality has a fire fighter's or police officer's pension fund**, the person may retire on pension until able to return to duty.
- (c) **If pension benefits are not available to a fire fighter or police officer who is temporarily disabled by a line of duty injury or illness**

and if the year at full pay and any extensions granted by the governing body have expired, the fire fighter or police officer may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

- (d) If a fire fighter or police officer is temporarily disabled by an injury or illness that is not related to the person's line of duty, the person may use all sick leave, vacation time, and other accumulated time before the person is placed on temporary leave.
- (e) After recovery from a temporary disability, a fire fighter or police officer shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another fire fighter or police officer may voluntarily do the work of an injured fire fighter or police officer until the person returns to duty."
[Emphases added in bold type].

The City of Fort Worth, Texas has created by City Ordinance¹ an "Employees' Retirement Fund", hereinafter called the "Fund". All employees of the City of Fort Worth are required to contribute to the Fund, including fire fighters and police officers, as a condition of employment. The Ordinances are rather voluminous, but are included with this letter for your reference. Chapter XXVII, Section 36 (a), of the *Charter of the City of Fort Worth* expressly requires such a retirement system.²

It would appear that the City of Fort Worth, although it does not have a pension or retirement plan which is solely for fire fighters and police officers, does in fact and at law have a "fire fighter's or police officer's pension fund" in that "pension benefits" are "available" for fire fighters and police officers in the City of Fort Worth.

It is clear that the Texas Legislature intended for a fire fighter or police officer temporarily disabled, to be able to retire on pension until able to return to duty if the municipality's governing body failed to extend injury leave and reduced a fire fighter or police officer's monthly salary below 60 percent of the person's regular monthly salary.

¹Ordinance numbers 13543, 13672, and 13842, specifically.

²Section 36(a) of the Charter provides: "There shall be a retirement system for the employees of the city which shall be known as the 'Employees' Retirement Fund of the City of Fort Worth.' The employees' retirement fund may provide a system of retirement and disability benefits for all municipal employees who become disabled as a direct and proximate result of the performance of their duties, or as a regard for faithful service over a period of years...."

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The statute does not appear to be ambiguous. Even if it were, there is a presumption that the Legislature intended the most reasonable and just interpretation thereof, and the statute should never be construed so as to work injustice or hardship or render it impracticable of enforcement or application.³ Furthermore, the primary objective in construing a statute is to give effect to the Legislature's intent.⁴

The Texas Legislature anticipated that some injuries or illnesses which were duty-related would not have leave extended for more than one year. Thus, the Legislature intended to allow the use of pension funds, when and where available, to provide financial stability and quality of life for fire fighters and police officers. Whether or not a statute is deemed ambiguous on its face, any Court would be obliged, in its construction, to consider, among other things, the object sought to be obtained and the consequences of any particular construction. It is to be presumed that in enacting legislation the Legislature intended a just and fair result feasible of execution.⁵

If a fire fighter or police officer needs to avail himself or herself of the provision found in Section 143.073 (b), it would be an unreasonable, unjust, and unfair interpretation and application of law not to allow a fire fighter or police officer to rely upon an "Employees' Retirement Fund", which the fire fighter or police officer was obligated to contribute to, just because the retirement Fund did not have a title that included the words "fire fighter", "police officer", or "pension". Such a strict interpretation would be improper.

In order to answer the above issues, it is my belief that an opinion issued by your office is necessary. If I can provide any additional information for you, please do not hesitate to let me know.

Respectfully submitted,



Ken Armbrister, Chairman

KA/bkj

enclosures

³See *Wilson v. Underhill*, 131 S.W.2d 19 (Civ.App.1939); *Smith v. Davis*, 426 S.W.2d 827 (Tex. 1968).

⁴See *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436 (Tex. 1997).

⁵See *Cole v. Texas Employment Commission*, 563 S.W.2d 363 (Civ. App. 1978).