



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 27, 1948

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-692

Re: Certificate of Board
of Trustees of Employ-
ees Retirement System
to Comptroller to en-
able transfer of funds
by State to the Em-
ployees Retirement
Fund.

Dear Sir:

Your recent request for an opinion by this Department concerns the information that must be contained in the certificate of the Board of Trustees of the Employees Retirement System to the Comptroller to enable the transfer of funds as the contribution of the State to the Employees Retirement Fund. Your letter contained the following:

"The question has arisen in this Department as to whether the State Board of Trustees shall certify to the Comptroller the total amount of the compensation paid such members of the Retirement System, or whether the Comptroller is authorized to accept the certificate of the State Board of Trustees which certifies the amount of employees five per cent (5%) retirement deductions reported to the Retirement System for the payroll of any given month. I shall therefore thank you to advise this department in the correct procedure in the premises."

Section 62(a), Article 16 of the Texas Constitution, provides, in part, as follows:

"The Legislature shall have the right to levy taxes to provide a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the State; provided that the amount contributed

by the State to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the State, and shall in no one year exceed the sum of One Hundred and Eighty Dollars (\$180) for any such person." (Emphasis added throughout)

Article 6228a of Vernon's Civil Statutes was passed pursuant to the power granted in Section 62, Article 16 of the Constitution, part of which is quoted above. Pertinent provisions of Article 6228a are:

"Sec. 8 A. The amount contributed by each member to the Retirement System shall be five per cent (5%) of the regular annual compensation paid to each member. The amount contributed by the State of Texas to the Retirement System shall not exceed during any one (1) year five per cent (5%) of salaries of all members, disregarding salaries in amounts in excess of Three Thousand, Six Hundred Dollars (\$3600), provided the total amount contributed by the State during any one (1) year shall at least equal the total amount contributed during the same year by all members of the Retirement System;

"1. The Employees Saving Fund. - The Employees Saving Fund shall be a fund in which shall be accumulated regular five per cent (5%) contributions from the compensation members, including current interest earnings. Contributions to and payment from the Employees Saving Fund shall be made as follows:

"a. Beginning on the date of the establishment of the membership and full operation of the Retirement System herein created, which date should be two (2) to three (3) months subsequent to the enactment of the Retirement Law, each Department of the State shall cause to be deducted from the salary of each member on each and every payroll of such department of the State for each and every payroll period, five per cent (5%) of

his earnable compensation, provided that the sum of the deductions made for a member shall not exceed One Hundred and Eighty Dollars (\$180) during any one (1) year. In determining the amount earnable by a member in a payroll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. . . .

b. . . . The Department head of the State shall certify to the State Board of Trustees on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, . . .

"Sec. 8 B. Collection of Contributions.

"1. The collection of members' contributions shall be as follows:

"b. The treasurer or proper disbursing officer of each State department on authority from the department head shall make deductions from salaries of the employees as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate a certified copy of the payroll and the amount specified to be deducted shall be paid to the Employees Savings Fund of the Employees Retirement System, after which the Executive Secretary of the Board of Trustees shall make a record of all receipts and turn payments over to the Treasurer of the State of Texas and by him be credited to the Employees Saving Fund, . . .

"2. The collection of the State's contributions shall be made as follows:

"a. From and after the date of the establishment of the membership and full operation of the Retirement System created by this Act takes effect, there is hereby allocated and appropriated to the Employees Retirement System of Texas, in accordance with this Act, from the several funds from which the employees benefited by this Act; receive their respective salaries, a sum equal to five per cent (5%) of the total compensation paid to the said respective employees who are members of said Retirement System and whose compensation is paid from funds directly controlled by the State. The State Board of Trustees shall certify to the State Comptroller of Public Accounts and the State Treasurer at the end of each month the total amount of compensation paid such members of the Retirement System, and the State Comptroller shall thereupon transfer five per cent (5%) of this amount from the said respective funds from which said employees are paid to the State Employees Retirement Fund; . . .

"d. For the purpose of computing the total amount of the compensation of members under the provisions of the State Membership Accumulation Fund, Section 8 of this Act, the compensation of every member who receives in excess of Three Hundred Dollars (\$300) a month shall be computed as Three Hundred Dollars (\$300) per month."

From the provisions of the Constitution above set out, it is apparent that a matching of contributions by the State of those made by employees to the Employees Retirement System was intended. No one will doubt that the intention of the Legislature in the enacting of Article 6228a, Vernon's Civil Statutes, was that of carrying into effect the provisions, and the intent manifested therein, of Section 16a, Article 16 of the Constitution. Any system under which the State would contribute a different amount from that contributed by the employees would not be in accordance with the general scheme of the law. But a system under which the State contributes the same amount as the employees would definitely be with-

in the intent manifested in the constitutional and legislative provisions. The proper amount to be transferred by the Comptroller to the Retirement Fund as the contributions of the State would be an amount equal to the contributions of member employees, so long as the contributions of member employees do not exceed five per cent (5%) of the compensation paid by the State to the individual employees and shall in no one year exceed the sum of One Hundred and Eighty Dollars (\$180) for any member. There are instances where a literal compliance with the provisions made in paragraph a, Subsection 2 of Section 8B, of Article 6228a would result in the violation of the constitutional provisions made in Section 16a, Article 16 of our Constitution. For example, members of the Retirement System who are 70 years of age or older and who have been State employees for ten or more years do not contribute to the Retirement Fund. Their pay, however, would be included in a certificate of the total amount of compensation paid to Retirement System members. Under the provisions of the paragraph of the Act above mentioned, the Comptroller would transfer an amount equal to 5% of such pay into the Retirement Fund, the result being a transfer of State money into the fund when no contribution had been made by members of the Retirement System.

A certificate of the State Board of Trustees of the amount of employees' five percent (5%) retirement deductions reported to the Retirement System for the payroll of any given month is in substantial compliance with the Act, and is more of an accurate certificate of fact upon which the Comptroller can effect the transfer of State funds consonant with the legislative intent than a certificate of the total amount of compensation paid to Retirement System members. Such a construction is a modification of the literal meaning of the language used in paragraph a, Subsection 2 of Section 8b of the Retirement Act, in order to carry out the intent of the Legislature in a more logical manner. We are, therefore, of the opinion that the Comptroller can accept the certificates of the Board of Trustees of the Retirement System which certify the amount of employees' five per cent (5%) deductions reported to the Retirement System. Such certificates may be used as the bases for making the contributions of the State to the Employees Retirement Fund.

SUMMARY

The State Comptroller is authorized to accept the certificate of the Board of Trustees of the Employees Retirement System which certifies the amount of the five per cent (5%) deductions from the compensation of member employees reported to the Retirement System. The Comptroller may use such a certificate as the basis for making the contribution of the State to the Retirement Fund.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

CBK:mv

By 
Clyde B. Kennelly
Assistant

APPROVED:


PRICE DANIEL
ATTORNEY GENERAL