



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

September 22, 1958

Mrs. Marie Hudson  
Firemen's Pension Commissioner  
702 Tribune Building  
Austin, Texas

Opinion No. WW-501

Re: The maximum benefit provided for the beneficiaries of a fireman who was covered at the time of his death by the provisions of the Firemen's Pension Law, said death not being caused by the performance of his duties as a fireman.

Dear Mrs. Hudson:

We have your request for an opinion. You desire to know what is the measure of the maximum benefit provided for the beneficiaries of a fireman who was covered at the time of his death by the provisions of The Firemen's Pension Law, said death not being caused by the performance of his duties as a fireman.

Section 7A of Article 6243e of Vernon's Civil Statutes, provides a pension allowance for death or disability from cause not resulting from performance of duties and reads as follows:

"Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the State having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may hereafter come within the provisions of this Act, shall die or become disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a pension allowance shall be paid to the widow or fireman. The monthly pension allowance shall be computed as follows: five per cent (5%) of the total amount the individual fireman or widow would have been entitled to receive under Section 7 or Section 12 had

such death or disability occurred as the result of such fireman's being incapacitated or killed while in and/or in consequence of the performance of his duty as a fireman shall be allowed for each year of participation in the relief and retirement fund, provided that such allowance shall not be computed on the basis of more than twenty (20) years. In no event, however, shall such fireman or widow receive an amount less than Fifty Dollars (\$50) per month. If such fireman be a volunteer fireman and thereby receiving no salary, the amount so ordered paid, if all of the other conditions have been met, shall be not less than Twelve Dollars and Fifty Cents (\$12.50) per month.

"If any such fireman who is a member of a 'full paid' fire department shall die from any cause not growing out of and not in consequence of his duty as a fireman and shall leave surviving him a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly pension allowance as follows: (a) to the guardian of each child the sum of Twenty Dollars (\$20) per month until such child reaches the age of eighteen (18) years; (b) in the event the widow dies after being entitled to her allowance as herein provided or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Forty Dollars (\$40) per month for each such dependent minor child; and (c) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

"Provided, however, that the provisions of this Section shall not apply if the death or disability of the fireman was caused while such fireman was gainfully employed by someone other than the respective fire department for which he was employed or contributed his services.

"The provisions of this Section as amended shall be automatically applicable to any relief and retirement fund in which such Section was included by majority vote of the members prior to the effective date of this amending Act, provided however that the paragraph providing benefits for surviving beneficiaries of a member of a 'full paid' fire department shall only be applicable to beneficiaries of a member of a 'full paid' fire department. Provided further however, that the provisions of this Section shall not be applicable to any particular relief and retirement fund in which such Section was not included prior to the effective date of this amending Act until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this Section within the Relief and Retirement Fund. At such election the effective date of these provisions shall also be set. Added Acts 1953, 53rd Leg., p. 352, ch. 82, § 3, as amended Acts 1957, 55th Leg., p. 617, ch. 275, § 6." (Emphasis added).

Section 12 of Article 6243e, Vernon's Civil Statutes, governs the amount of allowances to beneficiaries of deceased members, and is as follows:

"If any member of any department in any city or town having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may hereafter come within the provisions of this Act, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall

leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows: (a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third (1/3) of the average monthly salary of the deceased at the time of his retirement on allowance or death; (b) to the guardian of each child until such child reaches the age of eighteen (18) years, the sum of Six Dollars (\$6) per month for part paid or volunteer Departments, and the sum of Twenty Dollars (\$20) per month for fully paid Departments; (c) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Twelve Dollars (\$12) per month for each such dependent minor child for part-paid or volunteer Departments, and the sum of Forty Dollars (\$40) per month for each such dependent minor child for fully paid Departments; (d) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries. As amended Acts 1955, 54th Leg., p. 461, ch. 127, § 2; Acts 1957, 55th Leg., p. 617, ch. 275, § 13." (Emphasis added)

From the foregoing you are advised that when a fireman dies who was covered at the time of his death by the provisions of the Firemen's Pension Law, and said death was not caused by the performance of his duties as a fireman, the total pension allowance which may be paid his beneficiaries cannot exceed the monthly allowance to be paid the pensioner had he

Mrs. Marie Hudson, page 5 (WW-501)

continued to live or be retired on allowance at the date of his death. The actual date of death is the time to be used in the calculation.

SUMMARY

When a fireman dies who at the time of his death was covered by the provisions of the Firemen's Pension Law, and the death was not caused by the performance of his duties as a fireman, the total pension allowance payable to his beneficiaries cannot exceed the monthly allowance had he continued to live or be retired on allowance at the date of his death.

Yours very truly,

WILL WILSON  
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GPB:JH  
mc:zt:wb

APPROVED:  
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REVIEWED FOR THE ATTORNEY GENERAL

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