



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 24, 1962

Honorable Henry Wade
District Attorney
Records Building
Dallas 2, Texas

Opinion No. WW-1393

Re: Whether a retired employee of the Dallas County Retirement System who elected to take Option No. 1 on his retirement can change his retirement option to the regular maximum upon the subsequent death of his beneficiary.

Dear Mr. Wade:

You have requested an opinion from this office concerning the following fact situation:

"The Dallas County Employees Retirement System was established January 1, 1948, in accordance with and under authority of Article 16, Section 62, subsection b, of the Constitution of the State of Texas. The rules and regulations necessary to make the system operative, were promulgated by the Dallas County Commissioners Court in consultation with and under the direction of a fully qualified and accredited practicing actuary.

"Among the rules and regulations so established by the Court was one allowing a retiring employee to select one of the various options which would determine the amount of the retirement benefits. Thus, a retiring employee could select an option, whereby, for a reduced monthly benefit, his surviving beneficiary would receive an identical benefit as long as she or he might live. This is known as Option One."

In connection with the fact situation set forth heretofore you have posed the following question:

"May a retired employee of the Dallas County Retirement System who elected to take Option No. 1 on his retirement June 30, 1957, change his retirement option to the regular maximum upon the death of his beneficiary in November, 1961. This

would have the effect of substantially increasing his monthly benefits for the remainder of his life."

In Attorney General's Opinion No. V-158 (1947), this office held that Section 62(b) of Article XVI, Constitution of Texas, authorizing retirement and insurance programs for county employees upon a majority vote of the qualified voters of each county, was self-executing, and enabling legislation was not necessary to make it operative. Attorney General's Opinion No. V-158 (1947) further states that:

"The constitutional amendment . . . clearly indicates that each county shall have the right to provide for and administer a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the county, provided the same is authorized by a majority vote of the qualified voters of such county." (Emphasis added)

Pursuant to Section 62(b) of Article XVI, Constitution of Texas, the Dallas County Employees Retirement System was established and certain rules and regulations have been promulgated by the Dallas County Commissioners' Court for the administration of such retirement system. One of such rules or regulations so promulgated is found as a part of the "Retirement Benefit Election" form upon which an employee specifies the retirement benefit option which he desires. Such rule or regulation states that:

". . . After the first payment under a retirement allowance becomes normally due, the retired member shall not have the right to change the selected manner of payment. . . ." (Emphasis added)

Consequently, we are of the opinion that in view of the rule or regulation of the Dallas County Employees Retirement System, and so long as it remains in full force and effect, an employee who had elected to take Option No. 1 under the Dallas County Employees Retirement System cannot change to another manner of retirement benefit payment under such retirement system once such employee has commenced receiving retirement benefit payments.

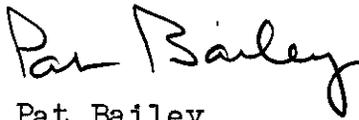
Honorable Henry Wade, page 3 (WW-1393)

SUMMARY

Under the facts stated, an employee of the Dallas County Employees Retirement System could not change to another manner of retirement benefit payment once such employee had commenced receiving retirement benefit payments under such system.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Pat Bailey
Assistant

PB:zt:wb

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Robert Rowland
Charles Lind
Robert Patterson
Fred Ward

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore