



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

February 15, 1966

Mrs. Marie Winters  
Commissioner  
Fireman's Pension Commission  
Sam Houston State Office Building  
Austin, Texas

Opinion No. C-611

Re: In a town with firemen, widows and children drawing benefits, where there is not sufficient money on hand to pay full pensions, should a paid fireman who terminates his service be refunded his contributions from the State Emergency Reserve Fund before the pensioners are paid and related question.

Dear Mrs. Winters:

Your recent letter to this office requests our opinion upon the following questions:

"1. In a town with firemen, widows and children drawing benefits where there is not sufficient money on hand to pay full pension, should a paid fireman who terminates his service be refunded his contributions from the State Emergency Reserve Fund before the pensioners are paid?

"2. Many of the pensioners are only drawing 30% to 50% of their pension. Should the refund be made on a pro rated basis? If so, what manner of proration would be legal, since any refund of contributions is going to reduce the pensions even more."

The conditions and circumstances whereby allocations may be made from the emergency reserve fund are set forth in Section 20 of Article 6243e of Vernon's Civil Statutes. The relevant portions of said Section read as follows:

"Whenever any Board of Trustees shall find the fund as herein provided and within their control insufficient to meet the demands against such funds, such Board of Trustees may make written application to the Firemen's Pension Commissioner for additional temporary apportionment from the emergency reserve of such Fund, such application by the sworn statement of at least three (3) members of such Board of Trustees showing that the department applying for such temporary apportionment has assessed its members the maximum assessment provided hereunder and showing further the necessity and reasons for such additional temporary apportionment and if approved by the Firemen's Pension Commissioner, he shall certify his approval to the State Treasurer . . . Upon such certificate of approval of such application by the Firemen's Pension Commissioner, the State Treasurer shall pay to such applicant Board the sum stated in such certificate from the emergency reserve of said Firemen's Relief and Retirement Fund and in addition to the amount to be paid such Board under the regular apportionment as herein provided due such Board."

We find no other provision relating to disbursements from the emergency reserve fund. This provision does not authorize any disbursement from such fund to be made to any individual who is entitled to benefits or refund of contributions under the Firemen's Pension Act. Such allocations as are authorized are to be made to the board of trustees of the local fund. Therefore, in answer to your first question, you are advised that a terminated fireman is not entitled to be refunded his contributions from the emergency reserve fund before pensioners are paid.

The provisions of the Firemen's Pension Act do not provide for any priority of payment as between benefits payable to retired firemen, widows and children, and the refund of contributions to terminated firemen. In the absence of some Legislative expression that such individuals are to be treated differently insofar as priority of payment is concerned we are not authorized to engraft upon the applicable statutes a provision placing one upon a higher footing than another.

Section 25 of Article 6243e clearly expresses the intention of the Legislature that a system of priority not be

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resorted to in disbursement of funds under this Act. Such Section provides as follows:

"If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proratably reduced for such time as such deficiency exists."

In our opinion, this Section requires a prorata reduction in all payments authorized by the Act when the available funds are insufficient to meet the immediate obligations payable. The term pro rata means according to proportion. Chenoweth v. Nordan & Morris, 171 S.W.2d 386 (Tex.Civ.App. 1943, error refused w.o.m.); Webster's Third New International Dictionary. Therefore, in answer to your second question, you are advised that all sums payable from a given fund should be proratably reduced when the fund is insufficient to meet the full obligations. This would necessarily include refunds of contributions to a terminated fireman. The determination of the amounts payable from any particular fund is a mathematical calculation dependent upon the facts in each instance and is a matter for administrative determination.

#### S U M M A R Y

The refund of contributions to a fireman who terminates his service prior to retirement is not payable from the emergency reserve fund before pensioners are paid; where a particular fund is insufficient to meet all disbursements payable from it under the Firemen's Pension Act, such disbursements, including refunds to terminated firemen, are to be proratably reduced.

Very truly yours,

WAGGONER CARR  
Attorney General

By

  
W. O. Shultz  
Assistant

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WOS:ml

APPROVED:  
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