



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

April 9, 1970

Honorable Marie Winters
Firemen's Pension
Commissioner
Sam Houston Building
Austin, Texas 78701

Opinion No. M-607

Re: Eligibility of local
Pension Board to invest
in mutual funds.

Dear Mrs. Winters:

You have requested the opinion of this office regarding the above question, and in this connection our attention has been specifically drawn to the Washington Mutual Investors Fund.

The extent of the investment authority of a Board of Trustees for a Firemen's Relief and Retirement Fund is set forth in Section 23A, Article 6243e, Vernon's Civil Statutes, as follows:

"Sec. 23A. (a) This Section applies to the Firemen's Relief and Retirement Fund in any city having a population of less than 185,000 according to the last preceding Federal Census.

"(b) Whenever, in the opinion of the Board of Trustees, there is on hand in the Firemen's Relief and Retirement Fund a surplus over and above a reasonably safe amount to take care of current demands upon such fund, such surplus, or so much thereof as in the judgment of the Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the

United States, the State of Texas, or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred stocks and common stocks as the Board may deem to be proper investments for the fund.

"(c) In making each and all of such investments the Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

"(d).....

"(e) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors." (Emphasis added.)

Section 23B, Article 6243e, also bears upon this problem, and is quoted as follows:

"Sec. 23B. The Board of Trustees of a full paid fire department may engage and employ professional

investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund."

We have been unable to discover any reported case in this or any other jurisdiction wherein the investment quality of mutual funds is discussed. Accordingly, we must be guided solely by the terms of the statute which authorizes the particular investment.

The statute above quoted is very specific as to the character of investments that are authorized for Firemen's Relief and Retirement Funds. The enumerated list of investments does not include mutual funds. We are aware that a mutual fund by contract with the investor, might set up a program of investments that will meet the particular investor's criteria. In particular, we have examined the prospectus of the Washington Mutual Investors Fund, which complies with the requirements for the List of Legal Investments for Trust Funds In The District of Columbia. A close examination of the prospectus reveals that the common stock investments of the Washington Mutual Investors Fund apparently meet or exceed all of the statutory requirements for common stock investment by a Firemen's Relief and Retirement Fund. Nevertheless, in the absence of express authority, and in view of the underscored language of Section 23A(b), supra, we hold that the Board of Trustees may not delegate to a mutual fund the discretion or judgment as to what securities shall be "proper investments for" the Firemen's Relief and Retirement Funds.

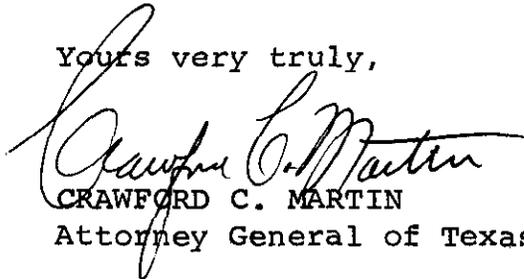
Accordingly, you are advised that it is the opinion of the Attorney General that a Firemen's Relief and Retirement Fund coming within the provisions of Section 23A, Article 6243e, Vernon's Civil Statutes, may only invest its excess funds in the securities specifically listed in said statute, and mutual funds are not an authorized investment.

Hon. Marie Winters, page 4 (M-607)

S U M M A R Y

Under Section 23A, Article 6243e, V.C.S.,
The Board of Trustees for a Firemen's Relief and
Retirement Fund may not invest in mutual funds.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Malcolm L. Quick
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Acting Co-Chairman

Jack Sparks
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Bennie Bock

MEADE F. GRIFFIN
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

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First Assistant