



The Attorney General of Texas

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Honorable Joseph N. Murphy, Jr.
Executive Director
Employees Retirement System of Texas
P. O. Box 12337, Capitol Station
Austin, Texas 78711

Opinion No. H-1285

Re: Whether a judge who retires before he is 65 is eligible for the additional 10% benefit authorized by article 6228b, § 2(a) for those who retire before age 70.

Dear Mr. Murphy:

You have requested our opinion regarding a provision of article 6228b, V.T.C.S., the Judicial Retirement Act. Section 2(a) authorizes the retirement of judges who have attained the age of 65. It further states, in pertinent part:

Any person retiring in accordance with this Act after the effective date of this amendment shall, during the remainder of such person's lifetime receive from the State of Texas monthly a base retirement payment equal to fifty percent (50%) of the salary being received by a judge of a court of the same classification last served by such person as judge. An additional ten percent (10%) of the applicable salary shall be added to the base retirement payments to the following judges: (1) those eligible for retirement under any provisions of this Act as amended who retire at or before age seventy (70); and (2) those who are not eligible by length of service to retirement benefits at age 70 but who retire immediately upon becoming eligible.

(Emphasis added). Section 2(d) provides for the retirement of any judge who is at least 60, but less than 65 years of age. The benefits accruing to such a person are

reduced from age sixty-five (65) years and his monthly base retirement payments shall be the following

percent of the salary being received by a judge of a court of the same classification last served by such person as a judge, based upon his retirement age. . . .

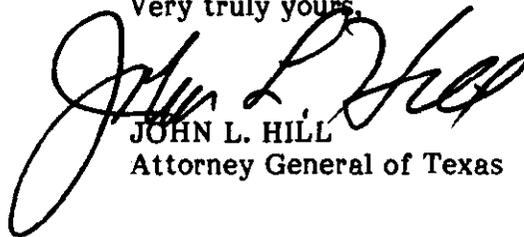
An individual who retires at age 60 is eligible for a 40 percent benefit, and the percentage increases for each year to age 64, when it is 47.7 percent of full salary. You ask whether a retiree under section 2(d) is eligible for the additional 10 percent benefit provided by section 2(a).

In our opinion, the additional 10 percent benefit is available to a judge who retires under section 2(d). The benefit "shall be added to the base retirement payment" of any judge "eligible for retirement under any provision" of the Act, provided he retires "at or before age seventy (70)." Section 2(d), describing "monthly base retirement payments" for certain retirees, is indisputably such a provision. In addition, while section 2(d) was added in 1971, section 2(a) was last amended in 1977. Since the legislature must be presumed to have chosen its language carefully, and since section 2(a) represents the latest expression of legislative intent, it is our opinion that a judge who retires prior to age 65 under the provisions of section 2(d) of article 6228b is eligible for the additional 10 percent provided by section 2(a).

S U M M A R Y

A judge who retires prior to age 65 under the provisions of section 2(d) of article 6228b, V.T.C.S., is eligible for the additional 10 percent benefit provided by section 2(a) of that statute.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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