

Teacher Retirement System
of Texas

1000 Red River Street
Austin, Texas 78701-2698

IO # 15853

EXECUTIVE SECRETARY
Wayne Blevins, Ed.D.

MBJ



RQ-371

April 7, 1992

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

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RE: Required Finding by Attorney General

Opinion Committee

Dear General Morales:

The Teacher Retirement System of Texas (TRS) currently is planning rule and administrative changes needed to implement statutory amendments enacted in H.B. No. 158, Chapter 13, Acts of the 72nd Texas Legislature, First Called Session, 1991, concerning disability retirement under TRS. The amendments have a September 1, 1992, effective date. Included in the amendments was the repeal of Section 824.304(c), Texas Government Code. See, Section 25(b) of Chapter 13. However, the repeal was contingent on a finding by the Attorney General before September 1, 1992, that the repeal is required by federal law. This letter provides information which may be helpful to you in making the required finding.

Section 824.304(c), Texas Government Code, currently provides as follows:

- (c) If a person receives a disability retirement annuity under Subsection (b) and the retirement begins after or continues until the person becomes 60 years old, the disability is conclusively presumed continuous for the rest of the person's life.

The repeal of this section would eliminate the conclusive presumption of disability for disability retirees age 60 or older.

The repeal was proposed in order to bring the TRS provisions on disability retirement into compliance with federal law. The Older Workers Benefit Protection Act, Pub.L. No. 101-433, 104 Stat. 978 (1990), amended the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) to prohibit discrimination against older workers in retirement plan provisions. The Act was passed in response to a U.S. Supreme Court decision that dealt specifically with age discrimination and disability retirement benefits, Public Employees Retirement System of Ohio v. Betts, 109 S.Ct. 256 (1989). Under Section 824.304(c), a disability retiree who is age 60 or older currently cannot return to public school employment, revoke the disability retirement, and earn additional retirement credit for TRS service retirement, although a disability retiree under age 60 is not prevented from doing so.

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The repeal would eliminate the presumption of disability for an older worker and allow him or her to revoke disability retirement by returning to work in the public schools or by voluntarily submitting evidence to the TRS medical board showing that the person is no longer disabled.

TRS notes that the repeal of Section 824-304(c) would not affect the requirement regarding physical reexamination of disability retirees. H.B. No. 158 did not amend Sections 824.305 and 824.306, which restrict mandatory reexaminations of disability retirees to those under 60 years of age. These sections do not discriminate against older workers and will not violate the Older Workers Benefit Protection Act. The repeal of Section 824.304(c) will not result in requiring a disability retiree over the age of 60 to undergo physical reexamination.

TRS has evaluated its disability retirement benefits for compliance with the federal law and believes that repeal of Section 824.304(c) is necessary to bring the TRS plan into compliance. TRS will soon propose rule amendments to implement the statutory amendments enacted in H.B. No. 158, including rule amendments that would be necessary if Section 824.304(c) were repealed as a result of your finding on this matter. Because of the need to have rules in place before the September 1, 1992, effective date for the statutory changes, TRS requests that you issue a finding on this matter as soon as possible. Please do not hesitate to contact me or Bill Baker, General Counsel for TRS, if you need additional information.

Sincerely,


Wayne Blevins

WB/vew