



Office of Fire Fighters' Pension Commissioner
P. O. Box 12577
Austin, Texas 78711

Lisa Ivie Miller
Commissioner

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OPINION COMMITTEE

May 20, 2004

The Honorable Greg Abbott
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

FILE # ML-43717-0
I.D. # 43717

RQ-0230-GA

CERTIFIED MAIL

RE: Request for Opinion

Dear General Abbott:

The Board of Trustees of the Texas Statewide Emergency Services Retirement Act (TSESRA) (Article 6243e.3 V.T.C.S. 65th Legislature Regular Session) at their quarterly board meeting on Tuesday, May 11th approved a motion to request an Attorney General's opinion regarding the authority of the Commissioner to charge participating departments an administrative fee for the payment Texas Local Fire Fighters' Retirement Act (TLFFRA) (Article 6243e. V.T.C.S. 45th Legislature, 1937) pensions administered by the TSESRA Board of Trustees and the Commissioner.

For some background, the Texas Local Fire Fighters' Retirement Act (TLFFRA) created in 1937 provided for a pension benefit for paid, part-paid and volunteer firefighters. Each city is responsible for administering separate pension systems for the fire fighters' in their city. For paid and part/paid departments, the minimum contribution rate for the member or host city is 9% of gross monthly income. The minimum benefit is \$100 per month. For volunteer fire fighters, the minimum contribution rate for the member or host city is \$5 per month. The minimum benefit is \$25 per month.

In 1977, the Legislature enacted TSESRA to provide better pension benefits exclusively for volunteer fire fighters. Cities had the option of merging into the TSESRA system; however, they were required to transfer existing pension assets to the TSESRA system to fund the accrued liabilities of the active members of the department. Merging cities with insufficient assets could finance the purchase of prior service credit for active members using a payout plan provided for by TSESRA.

Merging cities paying TLFFRA retirees on a pay-as-you-go basis before the effective merger date remained obligated to pay monthly retirement benefits. As part of the merger, the Office of the Commissioner billed the merging city the direct cost of the pension payments. No additional fees were assessed to cover the administrative costs of paying these pensions and maintaining the records of retirees.

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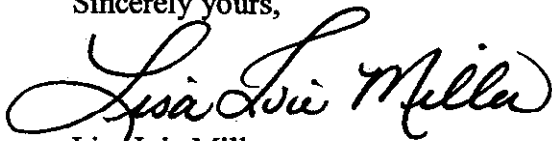
In 1996 the Board formalized this policy with the adoption of Rule 34 TAC 301.9 (c). This rule stated that governing entities are not billed for administrative costs associated with the Fire Fighters Pension Commissioner payment of TLFFRA pensions.

In November 2003, the Fund's actuary reported that the TSESRA system is not actuarially sound. As of August 31, 2002, the \$32.7 million fund had unfunded actuarial liabilities of \$13.1 million and that these unfunded liabilities cannot be amortized within 30 years as directed by the TSESRA.

To increase the amount of money available to amortize unfunded actuarial accrued liabilities, the Board would like to amend 34 TAC 301.9 (c) to allow for an assessment of administrative fees for the payment of TLFFRA pensions. The purpose of this fee is to collect revenue to pay the expenses associated with the processing of monthly pension checks and the maintenance of retiree files. Any amount collected by this fee would reduce the amount of administrative costs that are recognized in future actuarial valuations thus increasing the amount of money available to amortize the system's unfunded actuarial accrued liabilities.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Lisa Ivie Miller".

Lisa Ivie Miller
Commissioner