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**ARIZONA ATTORNEY GENERAL**

May 29, 1951  
Op. No. 51-145

Mr. John M. Williams  
City Attorney  
620 Tenth Street  
Douglas, Arizona

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Dear Mr. Williams:

We have your letter of April 23 wherein you request an opinion from this office concerning the Firemen's Relief and Pension Fund.

Your questions are:

- "1. Does the Board of Trustees of the Firemen's Relief and Pension Fund of the City of Douglas have the power to designate a part of the current income, such as interest on bonds, city contributions and tax on insurance as part of the permanent reserve fund?
2. Can the Board reduce pensions below one-half of the pay received for the twelve months prior to the retirement of a fireman even though current income is above the amount of pension payments now being made?"

As you undoubtedly know, one of the functions of this office is to give written opinions to state officers, legislators and county attorneys. We are necessarily precluded from writing opinions for private individuals, municipalities, corporations or other agencies. We will, however, as a favor to you, express our views concerning your problem.

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In answer to your first question, it is our opinion that the Board of Trustees of the Firemen's Relief and Pension Fund has the power to designate a part of the current income as part of the permanent reserve fund. We base this opinion on Subsection (c) of Section 16-1912 ACA 1939, as amended. This section reads:

"(c) All pay-roll deductions made under subsection (b), and in the discretion of the board of trustees such additional sums as it may deem proper, shall be set aside in a permanent reserve fund, and the income from the same, but no part of the principal, shall be used to meet retirement expenses, except that the portion of the principal which accrued from salary deductions may be drawn upon when necessary in order to meet the refunds provided for in subsection (b)."  
(Emphasis supplied)

It is our belief that the words "such additional sums as it may deem proper" when given their plain and ordinary meaning would be sufficient authority for the Board of Trustees to designate part of the current income as part of the reserve fund. It is true, of course, that this section does not state where the additional sums to be set aside are to come from. We believe there is nothing to prohibit setting aside funds from the Firemen's Relief and Pension Fund, inasmuch as the permanent reserve funds are a part of the Firemen's Relief and Pension Fund.

In answer to your second question, it is our opinion that the Board may not reduce pensions below one-half of the pay received for the twelve months prior to the retirement of the fireman if current income is above the amount of pension payments now being made.

Section 16-1904 ACA 1939, as amended, paragraph (a), states:

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"Retirement for length of service.--

When any person has served as a full time paid member of the same fire department or fire company in this state for twenty (20) years, the last five (5) years of which shall have been consecutive, then if he either is fifty-seven (57) years of age or over, or becomes physically unable for any cause, while a member of the fire department, to perform the duties of the service, he may, on his application and in the discretion of the board of trustees, be retired on a monthly pension equal to one-half the average monthly salary received by him for the twelve (12) months' period next prior to his retirement, to be paid from the firemen's relief and pension fund for his incorporated city or town or organized fire company. The pension shall in no event exceed one hundred fifty dollars (\$150) per month."

It is our opinion that the discretion vested in the Board of Trustees is to determine whether or not a fireman shall be retired. Should the Board exercise this discretion and decide that a fireman should be retired, then such fireman must be retired on a monthly pension equal to one-half the average monthly salary received by him for the twelve months' period next prior to his retirement, which amount in no event can exceed \$150.00 per month. It should be kept in mind, of course, that Section 16-1917 of Arizona Code Annotated does provide that should the funds be insufficient to fully pay the pensions the fund shall be prorated among those entitled.

We trust that this will be of some assistance to you.

Very truly yours,

FRED O. WILSON  
Attorney General

KENT A. BLAKE  
Assistant Attorney General

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