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ARIZONA ATTORNEY GENERAL

February 11, 1954
Opinion No. 54-24

TO: The Honorable Robert Hodge
Yuma County Representative
House of Representatives
Capitol Building
Phoenix, Arizona

RE: Firemen's Pension Recipient

QUESTION: May a fireman who retired pursuant to the provisions of Section 16-1901, et seq., A.C.A. 1939, as amended, by Chapter 62, Laws of 1953, be employed part-time in a non-teaching capacity by a public school system and still be entitled to the Firemen's Pension?

Article 19, A.C.A. 1939, as amended, entitled "Firemen's Relief and Pension Fund" prescribes the conditions under which a fireman may retire and become entitled to receive pension benefits pursuant to the provisions thereof.

Section 16-1904, A.C.A. 1939, as amended, by Chapter 62, Laws of 1953, provides for the retirement of firemen for length of service, stating in part:

"16-1904. Retirement for length of service. (a) When any person has served for twenty years in this state as a full time paid member of the same fire department or fire company, and is either fifty-seven years or more of age or becomes while a member of the fire department physically unable in the opinion of the board of trustees to perform the duties of the service, he shall on his application be retired on a monthly pension equal to one-half of the average monthly salary received by him for the five year period next prior to his retirement, to be paid from the firemen's relief and pension fund of his incorporated city or town or organized fire company. The pension shall in no event exceed two hundred fifty dollars per month."

Section 16-1905, A.C.A. 1939, as amended, by Chapter 62, Laws of 1953, sets forth the provisions governing the retirement of firemen for disability, providing in part:

"16-1905. Retirement of firemen for disability.
(a) A person duly appointed and serving in the fire department of an incorporated city or town, or a legally organized volunteer fire company, on becoming physically or mentally disabled through performance of his duties in the course of his service as a fireman, if his disabilities do not entitle him to compensation under the workmen's compensation laws, shall be retired on a monthly pension to be paid from the firemen's relief and pension fund for such period of time as the board of trustees deem proper and in the following amounts:"

The benefits derived under the retirement provisions of Article 19, supra, are subject to cessation by the occurrence of any or all of the events as set forth in Section 16-1910, A.C.A. 1939, as amended, by Chapter 62, Laws of 1953, which states:

"16-1910. Cessation of benefits. If a beneficiary is committed to the state hospital for the insane, is a habitual drunkard, fails to report for examination without being excused by the board, or disobeys any requirement of this article, the board may order his pension or allowance discontinued. Thereafter his benefit shall be paid to his immediate dependents or to his guardian. If a beneficiary enter the employ of the United States or any agency thereof, or of this state or any of its agencies or political subdivisions, the compensation for which is paid in whole or in part from public funds, the board shall order his pension or allowance discontinued during the employment."
(Emphasis supplied)

It will be noted that the words of the above quoted section make no distinction between full-time and part-time employees of any political subdivision or agency of the State of Arizona whose compensation is to be paid in whole or in part from public funds.

Section 54-401, A.C.A. 1939, establishes the school districts as the bases of the educational organization of the county and state.

"54-401. School districts.--The bases of the educational organization of the county and state are the school districts and high school districts. Districts now organized shall be maintained, and new

districts may be formed, as herein provided. Each organized school district shall be designated as school district No. (insert the number of the district), of _____ county (insert the name of the county), and in that name the trustees of the district may sue and be sued, and hold and convey property for the use and benefit of such district."

The wording of this section follows that of R.S. 1913, Section 2719 and R.C.A. 1928, Section 996.

In interpreting the intent of the Legislature our Supreme Court has held a regularly organized school district to be a quasi-municipal corporation created to administer the public school system in the following cases: HOWARD v. LUKE (1917) 18 Ariz. 563, 164 P. 439, and GLENDALE UNION HIGH SCHOOL DISTRICT v. PEORIA SCHOOL DISTRICT (1938) 51 Ariz. 478, 78 P.2d 141.

That a school district is a political subdivision of the state was decided by the Arizona Supreme Court in the case of SORENSON v. SUPERIOR COURT (1927) 31 Ariz. 421, 254 P. 230.

Section 54-431, A.C.A. 1939, specifies the purposes for which school money may be used, stating in part:

"54-431. Purposes for which school money may be used. Board of trustees shall use the school money received from the state and county school apportionment exclusively for the payment of salaries of teachers and other employees, and contingent expenses of the district. All warrants registered after January 1, 1936, drawn on the county treasurer against the school fund of the district by the county school superintendent upon the order of the board of trustees, shall be entitled to preference of payment out of the school fund according to priority of registration. If a balance remain in the school fund of a district after payment of all outstanding warrants and the expense of maintaining school for a period of eight (8) months during the school year has been paid, such balance may be expended for repairing the school house or improving the school grounds, or in the purchase of school furniture, fixtures, equipment and supplies, but no part of said money may be used in paying interest or principal

of the bonded debts of the district or in the purchase of land for school purposes. Funds received from sources other than state, county or school district levies may be used in building schools or in purchasing lands for schools." (Emphasis supplied)

The payment with school money of salaries of teachers and other employees appears to be inclusive of those employees whose employment is of a part-time, non-teaching capacity.

From the foregoing statutory and case authority it is the opinion of this office that a fireman who has retired pursuant to the provisions of Section 16-1901, et seq., may not be employed by the public school system in a part-time non-teaching capacity and still remain entitled to the benefits of the Firemen's Pension.

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