

OFFICE OF THE ATTORNEY GENERAL



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Honorable Martha A. Elrod
City Clerk
City of Gadsden
P. O. Box 267
Gadsden, Alabama 35999

Retirement Systems -
Policemen - Fire Fighters

Participation in the Police-
men's and Firemen's Retire-
ment Fund of the City of
Gadsden is mandatory and
benefits are fixed by statute.

Dear Ms. Elrod:

This opinion is issued in response to the request which you have submitted on behalf of the City Council of the City of Gadsden for an opinion from the Attorney General.

QUESTIONS

1. Is participation in the Policemen's and Firemen's Retirement Fund [of the City of Gadsden] mandatory or optional for police officers and fire fighters employed when they are between the ages of 18 and 35?
2. May members of the Fund, who are entitled to retire after 20 years' service, discontinue payment into the Fund after they attain 20 years' of service?
3. If the answer to No. 2 is yes, is the retirement benefit calculated on the

salary at the time of retirement, at the time 20 years' service is attained or on some other basis?

4. If the answer to No. 2 is yes, may the employee, who chooses to discontinue payment into the Fund, elect to pay into the social Security system (with the City paying its portion also) and/or join the Employees Retirement System of Alabama for service after 20 years?

5. If the answer to No. 2 is yes, may the City of Gadsden discontinue its payments into the Fund on account of such employee?

6. If members continue to work after attaining 20 years of service, are they entitled to any percentage increase for each year of service beyond 20? (If not presently authorized by law, could the statute be amended to provide for a 1 1/2% increase for each year worked over 20?)

FACTS AND ANALYSIS

Gadsden City Council Resolution No. R-232-93 requesting this opinion notes that police officers and fire fighters of the City of Gadsden participate in the Policemen's and Firemen's Retirement Fund of the City of Gadsden, that they contribute 11% of their salaries to the Retirement Fund and that they become eligible for a fixed benefit of 50% of final salary after 20 years of service or 30 years of service, depending upon their initial date of employment.

The Policemen's and Firemen's Pension Fund is now governed by Alabama Act No. 80-442, as amended by Alabama Act No. 84-410. Section 5(j) of Act No. 80-442 requires contributions from "each member of the Police and Fire Departments" and Section 22 of the Act broadly defines "member of such Police Department" and "member of such fire department," while Section 21 limits participation to members of the Police Department or Fire Department who were not less than 18 years of age and not more than 35 years of age at the time of qualification for participation. No election is provided and no exception is made, except as noted above, with regard

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to participation in the retirement fund. Therefore, in answer to your first question, participation is mandatory, and in answer to your second question, members may not discontinue payment of contributions to the fund after attaining 20 years of service.

In view of the answer to your question number 2, questions 3, 4 and 5 are moot.

In answer to your question number 6, there is no provision in the law entitling pension fund members to any percentage increase for service beyond 20 years. The statute could, of course, be amended to provide for such an increase.

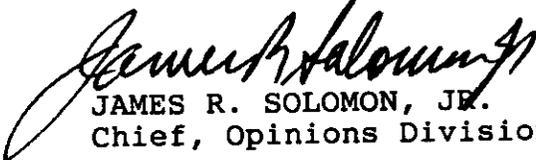
CONCLUSION

Participation in the Policemen's and Firemen's Retirement Fund of the City of Gadsden is mandatory and benefits are fixed by statute.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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