



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
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**AUSTIN, TEXAS 78711**

*See H-~~5~~-5*

April 7, 1971

Honorable L. DeWitt Hale  
Chairman, Judiciary Committee  
House of Representatives  
State Capitol  
Austin, Texas 78711

Opinion No. M-830

Re: Construction of House Bill  
806 of the 62nd Legislature,  
R.S. 1971, as it relates to  
the Judicial Retirement  
System of Texas.

Dear Mr. Hale:

Your request for an opinion reads in part as follows:

"H.B. 806 will convert numerous Courts of Domestic Relations and Juvenile Courts into State District Courts of general jurisdiction. Such a conversion, as you are well aware, would transfer the financing of these Courts from the several counties to the State of Texas. Such a conversion would also result in making these judges eligible for coverage under the Judicial Retirement System. It is this last result which has caused the need for an opinion from your office.

"Many of these Judges are now members of and participate in the Texas County and District Retirement System, for which regular payroll deductions are made. Some of the Judges have been participating in this system for many years. They are naturally concerned as to their status under such system should their Court be converted from local to State financing. The Judiciary Committee desires to protect the rights of all of these fine Judges and to write the conversion statute in such a way that each Judge can obtain the maximum coverage possible under one or the other of the two retirement systems.

"To enable the Judiciary Committee to draft this Bill in an intelligent way, we would deeply appreciate your official opinion answering the following questions:

"(1) If these Courts are converted to District Court status, can the Judges elect to retain their membership in the Texas County and District Retirement System by continuing to make voluntary contributions thereto?

"(2) If these Judges can elect to retain membership in the Texas County and District Retirement System, and they do elect to do so, can they thereby avoid the necessity for participating in the Judicial Retirement System?

"(3) If these Courts are converted to District Court status, is it mandatory that each of the Judges join the Judicial Retirement System, or can they waive participation in such system by electing to retain membership in the Texas County and District Retirement System?

"(4) If these Judges elect to join the Judicial Retirement System, can they legally buy or otherwise obtain credit for time served on the bench prior to the date of conversion?

"(5) If these Judges elect or are required to join the Judicial Retirement System, are they legally entitled to a refund of all contributions theretofore made to the Texas County and District Retirement System?

"(6) If these Courts are converted to District Court status, is it legally possible for these Judges to maintain membership in both retirement systems?

"(7) If any of these Judges has already qualified for a vested retirement benefit under the Texas County and District Retirement System, and such Judge after the conversion serves as District Judge long enough to vest a retirement benefit under the Judicial Retirement System, can he then legally draw benefits from both systems once he reaches retirement age?"

Membership in the Judicial Retirement System of Texas is limited to "Justices and Judges of the Appellate Courts and

District and Criminal District Courts". Article V, Section 1-a, Constitution of Texas.

Subsection (a) of Section 62 of Article XVI of the Constitution of Texas provides in part:

". . . Persons participating in a retirement system created pursuant to Section 1-a of Article V of this Constitution shall not be eligible to participate in the Fund authorized in this subsection; and persons participating in a retirement system created pursuant to Section 48-a of Article III of this Constitution shall not be eligible to participate in the Fund authorized in this subsection except as permitted by Section 63 of Article XVI of this Constitution. Provided, however, any officer or employee of a county as provided for in Article XVI, Section 62, Subsection (b) of this Constitution, shall not be eligible to participate in the Fund authorized in this subsection, except as otherwise provided herein. . . ."

Prior to the adoption of Section 63 of Article XVI of the Constitution of Texas a similar question was involved in Farrar v. Board of Trustees of Emp. Retirement System of Tex., 150 Tex. 572, 243 S.W.2d 688 (1951), relating to the Teacher Retirement System and the State Employees Retirement System. The Supreme Court held:

". . . if one's retirement benefits as an employee are to be based in part on services rendered years ago as a teacher, the Employees Retirement Fund will be to that extent depleted. That result would not serve the dominant purpose of the Employees Amendment as above discussed, in fact, it would be antagonistic to it. And the same would be true as to the Teachers Amendment if one's benefits thereunder are based on and paid in part for, service as an employee rendered long before that amendment was adopted. Sec. 48a of Article III of the Constitution, supra, clearly restricts teacher retirement benefits to teachers, while Sec. 62 of Article XVI, supra, with equal clarity restricts employee retirement benefits to employees. It follows that neither can be

suffered to encroach upon the other; nor can any other retirement system be permitted to encroach upon either of them, until the Constitution is amended to permit it."

Subsequent to the Farrar decision, Section 63 of Article XVI was adopted to allow members of the Teacher Retirement System and members of the Employees Retirement System to receive credit for service and membership in both retirement systems. Section 63, however, is limited to the Teacher Retirement System and the Employees Retirement System. Furthermore, as above noted, such a blending of the Judicial Retirement System with another retirement system is specifically prohibited by Section 62 of Article XVI of the Constitution of Texas.

You are therefore advised that the Legislature may not constitutionally authorize benefits under the Judicial Retirement System to be based in part on services rendered as a member of another retirement system, and likewise the Legislature may not constitutionally authorize benefits of the District and County Retirement System to be based in part on services rendered as a member of the Judicial Retirement System. Farrar v. Board of Trustees of Emp. Retirement System of Tex., supra.

Your questions are accordingly answered as follows:

(1) Judges of District Courts of general jurisdiction created by the provisions of H.B. 806 may not retain their membership in the Texas County and District Retirement System;

(2) Judges of District Courts of general jurisdiction created by the provisions of H.B. 806 automatically become members in the Judicial Retirement System;

(3) Judges of District Courts of general jurisdiction created by the provisions of H.B. 806 may not waive participation in the Judicial Retirement System;

(4) Judges of District Courts of general jurisdiction created by the provisions of H.B. 806 may not obtain credit for services rendered as a member of the Texas County and District Retirement System;

(5) Such Judges are legally entitled to a refund of contributions made to the Texas County and District Retirement System on termination of their membership in such system;

(6) Such Judges may not maintain membership in both retirement systems; and

(7) Such Judges may not legally draw benefits from both systems upon reaching retirement age.

S U M M A R Y

The Legislature may not constitutionally authorize benefits under the Judicial Retirement System to be based in part on services rendered as a member of another retirement system, and likewise the Legislature may not constitutionally authorize benefits of the District and County Retirement System to be based in part on services rendered as a member of the Judicial Retirement System. Farrar v. Board of Trustees of Emp. Retirement System of Texas, 150 Tex. 572, 243 S.W.2d 688 (1951); Article V, Section 1-a, Texas Constitution; Article XVI, Section 62, Texas Constitution.

Very truly yours,

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