

PENSIONS:
RETIREMENT:
CONSTITUTIONAL LAW:

A proposed amendment to a Jefferson City ordinance providing for an increase in pension payments to retired Jefferson City firemen would be in violation of Section 13, Article I, of the Missouri Constitution, if such action would involve taking a portion of the existing retirement fund to pay the increase to retired members.

OPINION NO. 177

March 18, 1969



Honorable Thomas D. Graham
State Representative - 122 District
312 East Capitol Building
Jefferson City, Missouri 65101

Dear Representative Graham:

This is to acknowledge receipt of your request for a formal opinion from this office which reads in part as follows:

"Jefferson City, some years ago, adopted a fireman's pension plan whereby a fireman could retire at half pay. The firemen were excluded from the benefits of social security.

" * * * In other words, a fireman retired in 1949 would have a retirement pay of \$100.00 a month whereas a fireman today would retire at \$214.21.

"As you know, it has been held by your office that those under the State Employees Retirement law already retired would not have the benefit of any increase voted to those presently serving. Is this also true of the fireman's pension plan?"

In determining the amount of retirement benefits for an employee of the local fire department, the pertinent sections of the Revised Ordinances of the City of Jefferson 1956 read as follows:

"Section 473. Fireman retirement fund, board of trustees. -- A firemen retirement fund and a board of trustees of the firemen's retirement fund is hereby created in the City of Jefferson, Missouri, to provide for the retirement of the members of such department, and the widows and minor children of deceased members, as provided in this ordinance, and to take from its municipal revenue a fund for such purposes.

* * * *

"Section 476(c). Every member of the fire department shall be assessed three per cent (3%) of his salary, to be paid in regular monthly payments, which sum is to be deducted from each members compensation which is due him on the first day of each month; this is to be done by the city clerk, who in turn shall give said amounts to the city treasurer, who in turn shall deposit same to the credit of the firemen's retirement fund. Every person who becomes a member of the fire department shall be liable to the aforesaid assessment, and, in becoming a member thereof shall be conclusively deemed to undertake and agree to pay the same and to have it deducted from his compensation as herein provided.

* * * *

"Section 479. Retirement, twenty-four years service. -- Any member of the fire department in service and having twenty-four years or more service in the department, of which the last ten years must be continuous, may file with the board an application for retirement on pension also setting forth a time, not less than thirty nor more than ninety days after filing of the application, at which he desires to be retired, and though his service has been discontinued during such period of notification, he shall be retired by the board as of the time desired, and shall be paid monthly for life out of the fund a retirement pension of one-half his regular monthly salary."

The issue for our determination is whether or not Jefferson City firemen already retired on pensions of half pay, based on their salary at the time of retirement, would be entitled to an increase under a proposed amendment to a city ordinance providing them with pension payments equal to the amount that active firemen will receive when they retire.

The leading Missouri authority on this issue is the case of

State ex rel v. Breshears Missouri State Employees' Retirement System
362 S.W. 2d 571 (1962). In this decision, it was held by the Supreme Court of Missouri, sitting en banc, that a 1961 amendment to a 1957 statute permitting payment of increased benefits to retired members, (emphasis ours) of the Missouri State Employees' Retirement System would take a portion of the fund existing when the amendment was passed to pay the increase and would impair the contract with active members in violation of Section 13, Article I, of the Missouri Constitution.

It is submitted that the same consideration is applicable to the matter in dispute. In line with the reasoning in the Breshears case, retired Jefferson City firemen would not be entitled to increased pension payments if this would necessarily involve taking a portion of the existing retirement fund to pay the "increase" to retired members, the reason being that such action would constitute an impairment of contract in violation of Section 13, Article I, of the Missouri Constitution as to all active firemen not retired and who have since continued to contribute.

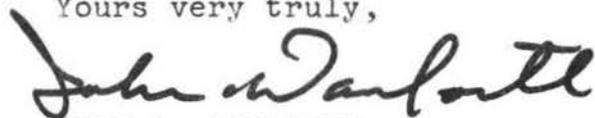
The Breshears case also indicated that a token payment to the system by retired members would not suffice to entitle them to share in future increased benefits. To avoid constitutional objections, each contribution would have to equal the present cash value, determined on an actuarial basis, of the increase to each contributor. See 362 S.W. 2d at 577.

CONCLUSION

It is the opinion of this office that a proposed amendment to a Jefferson City ordinance providing for an increase in pension payments to retired Jefferson City firemen would be in violation of Section 13, Article I, of the Missouri Constitution, if such action would involve taking a portion of the existing retirement fund to pay the increase to retired members.

The foregoing opinion which I hereby approve, was prepared by my assistant, B. J. Jones.

Yours very truly,



JOHN C. DANFORTH
Attorney General