

January 4, 1955. It was expressly so provided by the legislature in plain and unambiguous language for the obvious purpose of preserving to incumbent supreme court justices and circuit judges who elected to come under the new joint retirement system a right to retire regardless of age that would have vested under §25.121, *supra*, during their current terms of office.

It is clear from your question that the judge would not have completed twenty years of service prior to January of 1961 (the expiration date of his term of office beginning on January 4, 1955) even if the two years served as judge of the civil and criminal court of record were to be counted as part of his aggregate service.

Accordingly, your question must be answered in the negative.

073-88—March 28, 1973

PUBLIC FUNDS

STATE CONTRIBUTION TO RETIREMENT FUND FOR VOLUNTEER FIREMEN

To: Jerry Melvin, Chairman, House Committee on Retirement, Personnel and Claims, Fort Walton Beach

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May the legislature validly appropriate state funds to assist in financing a volunteer firemen's retirement fund?

SUMMARY:

State funds may validly be appropriated for the purpose of assisting in the financing of a volunteer firemen's retirement fund.

The proposed act is entitled the Florida Volunteer Firemen's Supplemental Pension Act. It declares that volunteer firemen "perform state, county and municipal functions" and that "it is a proper and legitimate state purpose to provide a uniform supplemental retirement system for the benefit of volunteer firemen hereafter defined." As defined in the act, volunteer firemen are those who are

appointed and regularly enrolled as volunteers in any fire department of the State of Florida, or any political subdivision or municipality thereof, or any State chartered volunteer fire department which holds drills and meetings of not less than eight hours monthly, and which owns or has leased fire apparatus and equipment of the value of \$10,000 or more, and which is recognized by the Insurance Services Office as not less than a rating of a class 9 fire department, and who attend not less than 75 per cent of all drills, meetings, and 50 per cent of all fires in every calendar year.

The pension fund in question would be administered by a board of trustees appointed by the governor, and by an executive secretary named by the board. The volunteer firemen would contribute from five to ten dollars monthly (depending upon the rating of the fire department) to the fund, and matching or greater amounts would be contributed from the state's "general fund" monthly. In addition, the state is required to contribute to the fund "all supplemental amounts needed to keep the fund actuarially sound." Volunteer firemen would be eligible to retire after serving twenty years and reaching the age of sixty, upon application to and approval by the board, and would receive retirement pay of from fifty to seventy-five dollars monthly thereafter.

There is some question as to the actuarial soundness of the proposed pension

fund and as to the practicability or feasibility of a pension plan that would be available to and could be participated in by volunteer firemen from a great many different local governmental and private organizations. However, as I understand your inquiry, its principal concern is not with the workability of the proposed plan but with the basic question of the validity *vel non* of the use of state funds to finance a pension plan for members of private nonprofit corporations organized for the purpose of fighting fires, as well as volunteers who serve without pay as members of municipal, county, or other statutory fire-fighting units or departments. I am inclined to the view that the courts would hold this to be a proper use of state funds.

In AGO 072-82 it was noted that

. . . the power of the Legislature to appropriate public funds is correlative with its power to tax, these powers being coexistent and resting on the same principles. The appropriations and expenditures of state funds must be for and pertain to a state purpose only. These purposes generally are for the support of government or recognized objects of government, or for the direct promotion of the welfare of the body politic. . . .

However, it is settled that the state, under its police power, has a broad latitude in the disbursement of public funds for the prevention and punishment of crime and promotion of public health, general welfare, and safety. *Lott v. City of Orlando*, 196 So. 313 (Fla. 1940). It is generally considered that the creation, maintenance, and operation of a fire department are public or governmental functions and matters of statewide concern, and not private, proprietary, or municipal functions, or matters of purely local concern. See 62 C.J.S. *Municipal Corporations* §592, p. 1223. Cf. *State v. Lee*, 24 So.2d 798 (Fla. 1946), holding that a county officers' and employees' retirement fund serves both a state and a county purpose for which either state or county taxes may be legally appropriated.

A pension is a periodic allowance or gratuity paid to an individual by the government for public services rendered in the past. [See] 24 Fla. Jr. *Pensions, etc.* §2, p. 572. And in *Greene v. Gray*, 87 So.2d 504 (Fla. 1956), the court said that it was committed to the doctrine that a pension or retirement pay for civilian services "is a legitimate *state* expense which the legislature is authorized to grant." (Emphasis supplied.) Volunteer firemen are authorized to participate in a municipal firemen's pension plan under Ch. 175, F. S., although these firemen apparently receive some compensation from the municipality. See §175.162(2)(b), *id.* It was noted in *Paulk v. Padron*, 181 So.2d 24 (Fla. 1965), that a municipal firemen's pension and retirement fund is

. . . an extra protection and reward made available by the legislature to members of established municipal fire departments who, as duly enrolled firemen, have assumed and followed on behalf of the public an extrahazardous duty. . . .

And it seems to me that the activities of volunteer firemen in fighting fires are no less a public service—and perhaps even more so—when contributed as members of a volunteer fire association or other fire department without pay. I have the view, therefore, that the state may validly appropriate state funds for rewarding such persons for their public services in this respect.

Accordingly, your question is answered in the affirmative.