

## The State of South Carolina



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March 14, 1989

The Honorable Timothy F. Rogers  
Member, House of Representatives  
530A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Rogers:

You anticipate that firefighters in the City of Columbia may join or become part of the State retirement system. Related thereto, you have asked two specific questions. You have questioned whether any action taken by the City Council prohibiting the alienation of any remaining funds in the present retirement fund to a private entity would be binding upon the Columbia city manager. You have likewise questioned whether any action taken by city council with respect to cost of living adjustments for firefighters would be binding upon the city manager. Finally, you have inquired whether proceeds from the firemen's insurance and inspection fund authorized pursuant to Sections 23-9-310 et seq. of the Code may be used for funding of the proposed pension plan and, if so, what is the mechanism for appropriating such funds?

The answers to your first two questions are fairly straightforward. Sections 5-13-10 et seq. of the Code establishes the council-manager form of government. It is our understanding that this is the form of government presently in existence in the City of Columbia. Section 5-13-30 establishes "(a)ll legislative powers of the municipality and the determination of all matters of policy" in city council. Section 5-13-50 authorizes city council to employ a city manager. Section 5-13-90 makes it clear that the manager "... shall be the chief executive officer and head of the administrative branch of the municipal government." In addition, pursuant to such provision the city manager "... shall be responsible to the municipal council for the proper administration of all affairs of the municipality." Based on the foregoing statutes, it is our opinion that any action taken pursuant to municipal ordinance by city council with regard to how the presently-existing pension plan may be modified is a question of legislative policy and would be binding upon the city manager.<sup>1/</sup>

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<sup>1/</sup> Of course, it is presumed that in any particular instance council is empowered to act.

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As to your remaining question, Section 23-9-310 of the Code provides as follows:

(i)n each city or town which has a regularly organized fire department under the control of the mayor and council or intendant and council of that city or town and in each unincorporated community having a population of two hundred fifty persons within an area of one mile radius in this State which has a regularly organized fire department under the control of a responsible authority or representative group of citizens in the community having in serviceable condition for fire duty fire apparatus and necessary equipment belonging thereto to the value of ten thousand dollars and upwards and having a total personnel of not less than ten men, including paid and volunteer members, deriving benefits from the provisions of this article, there must be appointed a local board of trustees, to be known as the trustees of the firemen's insurance and inspection fund, to be composed of three or five members.

Furthermore, Section 23-9-410 of the Code provides that the State Treasurer shall pay over the amount collected upon the premiums in the insurance business which are required to be reported pursuant to Section 38-7-70 of the Code to the treasurers of the counties to which premiums are allocated in accordance with Section 38-7-70 in the respective portions resulting from the allocations. This Section further provides that

(a)ll monies so collected must be set apart and equitably used by each of the treasurers solely and entirely for the betterment and maintenance of skilled and efficient fire departments within the county.

Section 23-9-460 of the Code provides that

(n)o funds of firemen's insurance and inspection fund may be divided among the firemen of any fire department in cash. When any fire department by a majority provides for the expenditure of any funds for the collective benefit and enjoyment of the entire department, it is mandatory for the local trustees and the state trustees of the South Carolina State Firemen's Association to approve the expenditure. None of

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the funds may be expended in any manner for any purpose for which any city, town, unincorporated community, or county may be legally liable.

With regard to these existing statutes, you have questioned whether it would be legally permissible to use any portion of the fund created pursuant thereto for use as part of the contemplated pension plan. While this question is a close one, it is our conclusion that such funding is legally authorized.

Section 23-9-460 clearly prohibits dividing any portion of the firemen's insurance and inspection fund "among the firemen of any department in cash." However, this Section further provides that when any fire department by a majority provides for the expenditure of any funds "for the collective benefit and enjoyment of the entire department" such funds may be expended therefor. A proposed modification in the pension plan for the firefighters for the City of Columbia would presumably be for the collective benefit and enjoyment of the entire fire department. Any pension plan or retirement benefit is designed to promote the general welfare of all employees even those who have not yet retired. By their nature, pension plans are designed to promote employee morale and give all employees peace of mind and security. Town of New Shoreham v. Rhode Island Public Utilities Commission, et al., 464 A.2d 730 (R. I. 1983); Bortel v. Board of Education of the Township of Cherry Hill, 240 A.2d 678 (N. J. 1968). Therefore, we believe the General Assembly contemplated that the statute be used for payments which would promote a pension plan for firefighters.<sup>2/</sup>

You have also asked what is the statutory mechanism for disbursement of the firemen's insurance and inspection fund pursuant to the foregoing purpose. The answer to this question appears to be covered by Section 23-9-460. Such statute provides that any expenditure of funds by a fire department must be authorized by a majority of that department. This Section also provides that "it is mandatory for the local trustees and the state trustees of the South Carolina State Firemen's Association to approve the expenditure." In summary, Section 23-9-460 clearly requires the approval by a majority of the firemen in the department, approval by the local trustees established pursuant to Section 23-9-320 and approval by the state trustees of the South Carolina State Firemen's Association before any disbursement may be made.

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<sup>2/</sup> Of course, the specifics of any proposed plan have not been presented to us and we make no comment regarding any particular plan. Our opinion herein comments only upon whether the statute contemplates usage of these funds as part of a pension plan.

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If we can be of further assistance, please let us know.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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