



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

January 20, 1975

Opinion No. 75-20

The Honorable Bob W. Storey
State Senator
Suite 310, 820 Quincy
Columbian Title Building
Topeka, Kansas 66612

Dear Senator Storey:

K.S.A. 14-10a03 provides in pertinent part thus:

"Any officer or member of any such police department or fire department having served twenty-two years or more on such department and having reached the age of fifty years may make application to be retired, and if such application is made the respective board of trustees shall retire such officer or member and shall pay him monthly payment in an amount equal to fifty percent of his monthly salary at the date of retirement, or if he be discharged from such department by reason of disability, or if he be discharged for any other reason, except conviction of a felony, after having served twenty-two or more years in such department, the respective board of trustees shall order and direct that said person, upon attaining the age of fifty years, be paid monthly payments. . . ."

[Emphasis supplied.]

You advise that some question has arisen concerning interpretation of the foregoing. More particularly, you state that the question arises whether "a fireman can put in the 22 years required under the law and then retire at an earlier age, say 45, and still receive . . . full benefits when he becomes 50 years of age." Some, you indicate, have taken the view that "if a fireman retires before he is 50 years of age even though he has completed the 22 years he is not entitled to any benefits," a construction which, you properly point out, hardly seems appropriate under the circumstances.

The underscored language cited above authorizes payment as benefits to persons upon their attaining the age of fifty years, but who have separated from the department prior to that time

"if he be discharged for any other reason [than disability], except conviction of a felony, after having served twenty-two or more years in the department"

The question is whether the term "discharged" includes voluntary retirement or other voluntary separation from the department, or whether it is restricted to those who are fired, i.e., discharged. In Internat'l Ass'n of Machinists v. State, 15 So.2d 485 (Fla. 1943), an action for breach of an employment contract, the court defined several pertinent terms thus, citing in connection therewith a United States Bureau of Labor Statistics publication:

"A 'quit' . . . is defined by the United States Bureau of Labor Statistics as a termination of employment by the worker because of his desire to leave A 'discharge' is a termination of employment at the will of the employer, with prejudice, because of some fault on the part of the worker. Insubordination, tardiness, incompetence, slothfulness, and dishonesty are some of the more common causes of discharge." 15 So.2d at 490.

In Anderson v. Twin City Rapid Transit Co., 84 N.W.2d 593 (Minn. 1957), the court stated thus:

"Of course, one whose employment terminates upon completion of a particular job for which he was employed is not discharged since a discharge is the termination of employment at the will of the employer with prejudice because of some fault on the part of the worker or on some other ground upon which the employer chooses to base his right in effecting the discharge. To discharge an employee removing him from his employment there must be some affirmative action taken by the employer indicating that he will no longer be bound by employment contract." 84 N.W.2d at 599.

Insofar as pertinent here, in order to be entitled to benefits upon attaining the age of fifty years by an officer or member who is not at that time a member of the department, it is necessary that he "be discharged for any . . . reason [other than disability] except conviction of felony, after having served twenty-two or more years in such department" The phrase "be discharged" suggests not an act of the employee himself, but an affirmative act of the employer which terminates the employment. In both common and legal parlance, an employer who is discharged is fired. One who voluntarily terminates his employer quits. If any employer "be discharged," he is ordinarily thought not to have resigned, but to have lost his employment by an affirmative act of the employer, and not by reason of a voluntary termination by the employee himself.

Such a construction leads to the result that a fireman who completes 22 years of meritorious service and who voluntarily leaves the department prior to reaching the age of 50 years is not entitled to benefits thereafter, whereas a fireman who completes an equal period of service and is discharged for, e.g., incompetence, insubordination or dishonesty, remains entitled to benefits upon reaching fifty years of age. It is difficult to conceive of any sound considerations of policy which support such a result. Nonetheless, in an opinion dated May 16, 1960, issued by Attorney General John Anderson, Jr., he pointed out that the language of the statute did not permit any other construction. He recognized that, as pointed out in State ex rel. Denton v. West, 156 Kan. 186, 131 P.2d 886 (1942), that

"[a]cts which provide pensions for firemen, like other acts, should be construed to give force and effect to the legislative intent as embodied therein. It is the purpose of pension acts to be beneficial and they should be liberally construed in favor of those intended to be benefited thereby." 156 Kan. at 190.

He was also mindful that, as the court also pointed out in Denton, that "it is not the province of courts to determine the wisdom of legislative policy. He stated thus:


"The reasons for requiring an employee to be 50 years of age at the time of voluntary retirement to qualify for benefits, while allowing an employee discharged before age 50 to draw benefits upon attaining that age are not clear. However, it is not our province to determine the wisdom of legislative policy."

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The language of the statute in question has remained unchanged since that time. The language clearly supports the construction given it by Attorney General Anderson, and indeed, it would strain the plain words of K.S.A. 14-10a08 to reach a contrary result. We cannot but conclude, as he did, that a fireman, e.g., who completes 22 years of service and voluntarily retires before reaching age 50 is not entitled to benefits thereunder upon attaining that age, although the fireman who completes 22 years of service and is discharged prior to age 50 remains entitled to benefits upon attaining that age.

The inequity of this result is apparent, and we seriously urge consideration of legislative action to correct this denial of benefits to those clearly deserving of the protection of the act.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj