



STATE OF KANSAS

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April 26, 1985

ATTORNEY GENERAL OPINION NO. 85- 40

Robert J. Watson  
City Attorney  
Ninth Floor  
Municipal Office Building  
One Civic Center Plaza  
Kansas City, Kansas 66101

Re: Cities and Municipalities--Retirement Systems--  
Retired Members and Certain Active Members of Local  
Plans Made Special Members of K.P. & F. System

Synopsis: A retired special member of the Kansas Police and  
Firemen's Retirement System is not prohibited,  
under the provisions of K.S.A. 1984 Supp. 12-5005(c),  
from being appointed to a position in a fire depart-  
ment, where the person is not specifically designated,  
appointed, commissioned or styled as a fireman by the  
city governing body. Cited herein: K.S.A. 1984 Supp.  
12-5005, 74-4952(11), K.S.A. 74-4955(1).

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Dear Mr. Watson:

You request our interpretation of K.S.A. 1984 Supp. 12-5005.  
Specifically, you ask whether a former city fire marshall who  
is a retired special member of the Kansas Police and Firemen's  
Retirement System (hereinafter referred to as K.P. & F.) may  
be appointed "civilian" Director of the Fire Department. You  
indicate that the Director is not specifically designated,  
appointed, commissioned or styled as a fireman by the governing  
body, nor is he certified to K.P. & F. as such.

K.S.A. 1984 Supp. 12-5005(c) provides in part, and subject to exceptions not relevant here, as follows:

"[N]o retired special member [of K.P. & F.] shall be appointed in or to a position or office for which compensation is paid for service to . . . the same police or fire department of a city." (Emphasis added.)

In addressing the question you have posed, it is necessary to consider whether the above prohibition applies to all full-time positions in a city fire department, or whether it was intended to apply only to positions requiring membership in K.P. & F. If the latter were the legislative intent regarding the scope of the prohibition, the office of Director of the Fire Department would be excluded therefrom, since the person holding such office must be a member of the Kansas Public Employees Retirement System rather than K.P. & F. See K.S.A. 1984 Supp. 74-4952(11) and K.S.A. 74-4955(1).

In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may consider, inter alia, the purposes to be accomplished and the effect the statute may have under various suggested constructions. Jackson v. City of Kansas City, 235 Kan. 278, 319 (1984). In this regard, it appears that the purpose of prohibiting a retired special member of K.P. & F. from serving again in the same fire department is to preserve and maintain the K.P. & F. fund on an actuarially sound basis, i.e. to prevent a member who has attained the maximum benefit from retiring and subsequently being rehired in the same position. In our opinion, this purpose is furthered by construing the language of K.S.A. 1984 Supp. 12-5005(c) to apply only to positions which are substantially the same as that from which the member has retired, i.e. a position which requires a commission as a fireman and membership in K.P. & F. As noted above, you advise that the Director of the Fire Department will not be either a commissioned fireman or a member of K.P. & F.

Additionally, we note that an Indiana court has held that a fire chief is not a member of the fire department under Indiana pension laws. State ex rel. Harrell v. City of Wabash, 65 N.E.2d 494 (Ind. App. 1946). Other courts have held that persons who are not commissioned as police officers are not members of a police department under pension laws. Police Pension Board of City of Phoenix v. Warren, 398 P.2d 892 (Ariz. Sup. Ct. 1965); Weyel v. Board of Firemen, Policemen & Fire Alarm Op., 345 S.W.2d 456 (Tex. App. 1961).

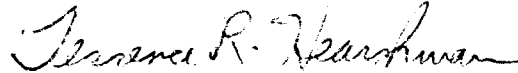
Robert J. Watson  
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In accordance with the above-cited authorities, it is our opinion that a retired special member of K.P. & F. is not prohibited, under the provisions of K.S.A. 1984 Supp. 12-5005(c), from being appointed to a position in a fire department, where the person holding the position is not specifically designated, appointed, commissioned or styled a fireman by the governing body.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JSS:TRH:jm