

PENSIONS: Funds for payment of firemen's and policemen's pension must come from source set out in pension plan adopted.



June 12, 1946

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Honorable W. H. McDonald  
Missouri House of Representatives  
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for our official opinion, as follows:

"A number of questions have been asked me concerning House Bill No. 297 which is now a law and pertains to the retirement fund for the police and firemen.

"In a recent election in Joplin, the pension fund for both policemen and firemen passed by a substantial majority. The levy to pay for this fund as presented to the voters called for two-thirds majority providing for the funds necessary to carry out the pension fund. It was suggested by some that this pension fund should come out of the general revenue fund and did not require the approval of the electorate."

Pursuant to our request, you have furnished us a copy of the Pension Plan created by Ordinances of the City Council of Joplin, Missouri, relating to the Firemen's Pension Plan and the Policemen's Pension Plan, which were submitted at a regular municipal election on April 2, 1946, and which were approved by a majority of the voters at the election.

House Bill No. 297 was duly approved by the Governor on December 19, 1945, and authorizes municipalities in first class counties and other municipalities which have more than 6,000 inhabitants to pension salaried members of their organized police force or fire department, and is as follows:

Section 1. Any municipality in any county of the first class, and any other municipality in this state which now contains or may hereafter contain not more than 100,000 inhabitants nor less than 6,000 inhabitants as determined by the last preceding federal census is hereby authorized to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of deceased members: Provided, however, that nothing in this act shall be construed to affect any pension or retirement system for members of an organized police force or fire department, and their widows or minor children, which has been established previously under authority of an act of the General Assembly and which is in operation at the time of the passage of this act, and the provisions of law applicable to any such pension or retirement system shall not be deemed to be repealed or superseded by the provisions of this act. This act shall not take effect in any such city until approved by the voters thereof as herein provided. On order of the city council, or on petition of 100 qualified voters of said city, the city clerk shall publish notice thereof and submit to the qualified electors of said city at the next general or municipal election the question: 'shall the police or firemen's pension plan be approved?' If a majority of the voters casting votes thereon at the election is in favor of the question, this act shall take effect in said city thirty days after the election. Notice of every such election under this act shall be published at least once a week for at least three weeks in a newspaper of general circulation in said city, the last publication to be not more than three nor less than two weeks next preceding the election."

The bill was enacted with an emergency clause.

The pensions contemplated by the above act were made possible by Section 25, Article VI, of the Constitution of 1945, which provides as follows:

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 100,000 inhabitants to provide for the pensioning of other employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

A reference to the Pension Plan adopted at the Joplin election on April 2, 1946, discloses the method of providing funds for the payment of pensions. Section 4 of the Ordinance is as follows:

"The Board of Trustees shall annually, prior to the time provided by law for the fixing of the tax levy rate by the City Council, certify to the City Council the amount of money which the Board finds will be required to cover all payments which the Board anticipates will become due and payable hereunder during such annual period. The City Council shall submit a proposition to the qualified electors of the city to increase the rates of taxation as limited by the Constitution of 1945 and as limited by law for a period of not to exceed four years, and if two-thirds of the qualified electors voting thereon shall vote therefor, a special levy for the purpose of maintaining the Pension fund shall be authorized. The City Council shall, in fixing the annual tax levy

rate, include such special tax levy upon all taxable property subject to taxes for city purposes, and the proceeds of such special tax levy shall be placed to the credit of a fund to be known as the Pension Fund, from which all disbursements in connection with the Firemen's Pension Plan and the Police Pension Plan shall be made. Disbursements from such fund shall be authorized by vouchers drawn by the Board of Trustees and certified to the City Council, and the City Council shall by ordinance appropriate from the Pension Fund the money necessary to pay such vouchers. If at any time the electors shall fail to authorize a special tax levy for the purpose of maintaining the Pension Fund as herein provided, then the City Council shall not be authorized to make such special tax levy nor to levy any taxes for such purpose. The maximum amount of any special levy shall be limited to the amount authorized by the qualified electors from time to time."

Since the above portion of the Pension Plan clearly limits public funds to be used to those obtained by a special tax levy to be approved by two-thirds of the qualified electors voting on the question, it is clear that no portion of the general funds of the city can be used for this purpose so long as the present Ordinance and Pension Plan remains in effect. We find the well settled rule expressed in *Orthwein v. St. Louis*, 265 Mo. 556, l. c. 568:

"\* \* \* Ordinances, like statutes, are primarily to be interpreted according to the ordinary meaning of their words and the proper grammatical effect of their arrangement. It will be presumed that the municipal legislature, like that of the sovereign State, are conversant with the simple rules of grammar and have expressed their will in apt terms, unless it is apparent in the act itself that the application of such a presumption would be absurd, extravagant, or repugnant to other provisions of the law which must stand with it. \* \* \*"

CONCLUSION

It is, therefore, our conclusion that under the present Pension Plan as adopted by the City of Joplin, and as submitted with your opinion request, funds for the payment of pensions to firemen and policemen must be derived from a special levy authorized by two-thirds of the qualified electors voting at an election for that purpose, and that funds received under the general levy fixed by the City Council cannot be used for such purpose under the present Plan.

Respectfully submitted,

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APPROVED:

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