

Opinion No. 56-6401

March 5, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: John C. Hays, Administrator, Social Security Division, Public Employees Retirement Association, P. O. Box 2237, Santa Fe, New Mexico

We have your recent request for an opinion as to the validity of the ordinance of the City of Roswell which repealed the section of the municipal retirement ordinance covering police and firemen in the City of Roswell.

Section 14-19-1, N.M.S.A., 1953, which authorized the creation of the municipal retirement system, reads as follows:

". . . the employees of such cities, towns and villages who are qualified or may in the future be entitled to receive benefits under such plan shall upon the passing of such an ordinance be deemed to have an established right in and to such fund and to the continued operation of such plan . . ."

From this statute, it would appear that the police and firemen of the City of Roswell would have a vested interest in the continuance of the plan and that the City of Roswell could not revoke the plan by repealing that part of the ordinance covering police and firemen.

It is our understanding that the City of Roswell took this action after a petition was submitted to the City Council by the police and firemen. The City of Roswell took the action in contemplation of full coverage under the Social Security System with the Federal Government and that the Fire and Police Department requested exclusion from the municipal system of retirement so that they could be covered by Social Security also.

Subsequent to the passage of the ordinance, each member of the Police and Fire Department signed an affidavit in which they renounced all their rights and benefits under the Roswell City Employees Retirement Plan. We are enclosing copies of the affidavits, which were submitted to this office, for your file.

We are of the opinion that the Legislature intended to give the members of the municipal retirement plan a personal right in the continuance of a plan once established. We are further of the opinion that this personal right could be waived by the individual under the retirement plan and that the police and firemen of the City of Roswell have waived their rights to the continuance of the Roswell Municipal System provided under the authority of § 14-19-1, N.M.S.A., 1953.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General