

1977 WL 36982 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1977

\*1 Captain Ed Goff  
Columbia Fire Department  
1001 Senate Street  
Columbia, SC 29201

Dear Captain Goff:

You have requested an opinion as to the constitutionality of certain proposed amendments to the statutes concerning firemen's pension funds in cities of 50,000 to 70,000, 1940 Census (Sections 61–421 *et seq.*, 1962 Code of Laws). All of the amendments would apply wherever the aforesaid statutes are in effect and would relate to such matters as providing a cost of living raise for present retirees, making the disability provisions less stringent, etc. Your specific question is whether this would constitute special legislation. Since the reason for providing a special retirement system for such cities is not clear, the original statute itself is open to the charge that it might be special legislation. Apparently only one city, Columbia, had a population between 50,000 and 70,000 in 1940. While it is not certain that amendments to this act would be unconstitutional, the matter is sufficiently questionable so as to force consideration of other methods. I would suggest that you ask the county attorney to consider drafting general legislation which would cover the Columbia Fire Department; another method, although less satisfactory, would be to make the amendments applicable to all firemen's retirement systems.

You have also inquired as to whether a fireman with over 25 years' experience who is involuntarily dismissed thereby forfeits his right to retirement benefits (his contributions would be returned in any event; see Section 61–435). It is apparent that since one is entitled to retirement benefits after 25 years, Section 61–427, this is a vested right which cannot be destroyed; see 60 Am.Jur.2d, Section 49. The only effect of a dismissal is the obvious one of cutting off the establishment of more time for retirement credit.

I apologize for taking so long with this letter. Please let me know if I can be of further help.

Sincerely yours,

Kenneth P. Woodington  
Assistant Attorney General

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