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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0176

92-A-2(d) RETIREMENT-Municipal Employees
92-A-2(m) RETIREMENT-Firefighters

Honorable C. Robert Rose
Mayor, City of Leesville
101 West Lee Street
Leesville, Louisiana 71446

La. R.S. 11:1731 *et seq.*
La. R.S. 11:2251 *et seq.*

The City of Leesville may not offer participation in the Municipal Employees Retirement System of Louisiana to Fire Department personnel.

Dear Mayor Rose:

Our office received your request for an opinion regarding whether the City of Leesville may offer participation in the Municipal Employees Retirement System of Louisiana ("MERS") to Fire Department personnel.

According to the information in your request, in July of 1979, the City of Leesville ("Leesville") enacted an ordinance, pursuant to La. R.S. 11:2253, exempting Leesville from mandatory participation in the Firemen's Retirement System ("FRS"). However, according to the information obtained by this office from FRS, Leesville Fire Department personnel are still eligible for membership and participation in FRS and Leesville has offered participation in FRS subsequent to enacting the ordinance exempting it from mandatory participation.

You indicated in your request that Leesville requested that Fire Department personnel be enrolled in MERS and MERS has determined that Leesville Fire Department personnel are not eligible for membership in their system unless they are deemed ineligible for participation in FRS.

As background, FRS was created by Acts 1979, No. 434, §1, with an establishment date of January 1, 1980. See La. R.S. 11:2251 *et seq.* La. R.S. 11:2253 allows a municipality to be exempted from mandatory employee membership in FRS. An employee, for the purposes of membership in FRS, is defined as any full-time firefighter or any person in a position as defined in the municipal fire and police civil service system who is employed by a fire department of any municipality, parish, or fire protection district of the state of Louisiana, excepting Orleans and Lafayette Parishes, and, who is earning at least three hundred seventy-five dollars per month excluding state supplemental pay. See La. R.S. 11:2252(10).

MERS was established on January 1, 1955. See La. R.S. 11:1731 *et seq.* An employee's eligibility for participation in MERS is dependant on several factors. For purposes of this opinion, the determining factor for eligibility for participation in MERS is whether the employee is eligible for membership in any other retirement system. Persons who are members of any fund or who are eligible for membership in any fund financed wholly or partly by public funds for the retirement of employees by the state of Louisiana or by a city, parish, village or other political subdivision in the state of Louisiana, are specifically excluded from membership in MERS. See La. R.S. 11:1752.

Although Leesville has enacted an ordinance exempting Leesville from mandatory participation in FRS, there does not appear to be any prohibition against Leesville offering participation in FRS to Fire Department personnel. As stated above, Leesville has offered participation in FRS to Fire Department personnel subsequent to enacting the ordinance exempting Leesville from mandatory participation in FRS. In a similar factual situation, this office opined that an employee (fireman) may join FRS even though the city had passed an ordinance exempting itself from mandatory participation in FRS. See La. Atty. Gen. Op. No. 80-212.

In the event that Leesville does not continue to offer participation in FRS to Fire Department Personnel or Leesville does not pay the employer's contribution to FRS, Fire Department Personnel would not be eligible for participation in FRS and would be eligible for participation in MERS.

Leesville's Fire Department personnel are, generally, not eligible for participation in MERS because they are, generally eligible for participation in FRS.¹ Therefore, it is the opinion of this office that the City of Leesville may not offer participation in the Municipal Employees Retirement System of Louisiana to Fire Department personnel.

We hope that this opinion adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: 
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JDC: MSC

¹ There are some exceptions to eligibility in FRS.