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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 15-0024

The Honorable Bryan J. Adams
State Representative, District 85
P.O. Box 1387
Gretna, LA 70054

92-A-2-(m)- Retirement- Firefighters

La. R.S. 11:2252

La. R.S. 11:2253

An employee of a private, non-profit, 503(c) corporation engaged in providing fire protection services is not required to enroll and contribute to the Firefighters' Retirement System.

Dear Representative Adams:

You have requested an Attorney General's opinion as to whether an employee of a private, non-profit, 503(c) corporation engaged in providing fire protection services is required to enroll and contribute to the Firefighters' Retirement System (FRS).

For purposes of membership in the FRS, La. R.S. 11:2253 provides, in relevant part:

A. The membership of the retirement system shall be composed as follows:

(1)(a)(i) Except as provided in R.S. 11:2252(12), and except as provided further in this Paragraph, any person who becomes an employee as defined in R.S. 11:2252 on and after January 1, 1980, shall become a member as a condition of his employment.

....

D. In any case of doubt, the board of trustees shall be the sole judge as to eligibility for membership.

To this end, La. R.S. 11:2252 reads, in pertinent part, as follows:

(10) "Employee" shall mean 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.

(11) "Employer" shall mean any municipality, parish, or fire protection district in the state of Louisiana, excepting Orleans and Lafayette

Parishes, which employs a full-time fireman, and the Firefighters' Retirement System.

....
(13) "Member" shall include any employee, as defined in Paragraph (10) of this Section, included in the membership of this system as provided in R.S. 11:2253 and may, at the employee's option, include any employee of the retirement system.

Thus, in order to be a member of the FRS, the individual needs to meet the following criteria: (1) work full-time as a firefighter or hold a position as defined in the municipal fire and police civil service system; (2) be employed by a fire department of any municipality, parish or fire protection district (excepting Orleans and Lafayette parishes); and (3) earn more than \$375 a month (excluding supplemental pay).

Clearly, a private, non-profit fire department cannot be considered an employer for the purposes of the FRS because it is not a municipality, parish, or fire protection district. Since the private employee is not employed by any of the entities listed in La. R.S. 11:2252 (10) and (11), the second prong is not met and said individual cannot become a member of the FRS.

Further, we note that the FRS' letter attached to your request links the volunteer firefighters' supplemental pay to mandatory enrollment in the retirement system. The FRS reasons that "if [volunteer firefighters] are receiving state fire supplemental pay, then they probably should be enrolled in the FRS."

La. R.S. 40:1666.1 provides for extra compensation by the state to local fire department employees, including firefighters working for non-profit corporations.¹ However, the enjoyment of this benefit does not automatically give private firefighting corporations the same prerogatives as those of the fire departments operated by public entities. For example, volunteer fire departments are not required to establish a classified civil service because volunteer fire departments are "operated" by their membership, and not by the municipality and therefore the provisions for civil service are inapplicable.² Also, volunteer fire department employees are excluded from the Firefighter's Bill of Rights.³ Moreover, employees of a volunteer fire department are not considered public employees for the purposes of the Dual Officeholding and Dual Employment Laws.⁴

¹ The enactment of Act 1000 of 1991 (granting supplemental pay to employees of a non-profit contracting with a fire department or fire district) was the legislature's response to La Atty. Gen. Op. No. 90-667 (stating that supplemental payments were illegal because the employee must be on the payroll of a municipal, parish or fire protection district fire department). See *Terrytown Fifth Dist. Volunteer Fire Dep't, Inc. v. Wilcox*, 707 So. 2d 449, (La.App. 5 Cir. 1/14/98), writ denied, 98-0381 (La. 3/27/98), 716 So. 2d 890.

² See *Heintz v. City of Gretna*, 96-555 (La.App. 5 Cir. 11/26/96), 683 So.2d 926.

³ See *Marks v. Third Dist. Volunteer Fire Dep't*, 13-383 (La.App. 5 Cir. 12/30/13), 131 So.3d 1099.

⁴ La. Atty. Gen. Op. No. 13-0021A.

By enacting La. R.S. 11:2253, the legislature specifically defined the firefighters who are required to be members of FRS. Individuals who work for a non-profit corporation are not among them. If the legislature had intended for the mandatory membership in FRS to be applicable to employees of private corporations providing firefighting services, it would have specifically included them in the listed entities of La. R.S. 11:2252(10) and (11), just like it did in La. R.S. 40:1666.1.⁵

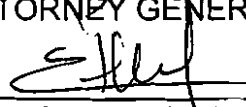
In sum, it appears that if a firefighter is not employed and paid by a municipality, parish or fire protection district (excepting Orleans and Lafayette parishes), he is not eligible to be a member of the FRS. As such, it is our opinion that the employee of a private, non-profit, 503(c) corporation engaged in providing fire protection services is not required to enroll and contribute to FRS. However, we point out that under La. R.S. 11:2253(D), in any case of doubt, the board of trustees is the sole judge as to eligibility for membership. In the event that the Board of Trustees reaches a different conclusion, the Board's final determination prevails.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By:


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JDC: ESG

⁵ The settled rule of statutory construction that the mention of one thing in a statute implies the exclusion of another thing, *i.e.*, the doctrine of "*Expressio Unius est Exclusio Alterius*," dictates that when the legislature specifically enumerates a series of things, the legislature's omission of other items, which could have easily been included in the statute, is deemed intentional. *Filson v. Windsor Court Hotel*, 2004-2893, p.6 (La. 6/29/05), 907 So.2d 723, 728.