CHAPTER 13

Firemen’s Pension Funds in Cities

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑13‑10.** Power of cities to establish pension funds, create board of trustees, and raise monies.

 In any city of this State having a fire department with one or more paid members, the city council may form a pension fund, create a board of trustees to manage such fund and raise funds for the pensioning of disabled and retired firemen of such cities.

HISTORY: 1962 Code Section 61‑381; 1952 Code Section 61‑381; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1979 Act No. 79 Section 1.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 3.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Shillito v. City of Spartanburg (S.C. 1948) 214 S.C. 11, 51 S.E.2d 95, 5 A.L.R.2d 863.

This article was not repealed by 1945 Act No. 161 [1945 (44) 236], but by its terms was amended. Taylor v. Marsh (S.C. 1947) 211 S.C. 36, 43 S.E.2d 606.

**SECTION 9‑13‑20.** Board of trustees and officers thereof.

 The board of trustees shall consist of five members as follows: the chief of the fire department, the mayor of the city, or one member of council to be appointed by the mayor who will serve a two‑year term, and three members elected in such manner and with such qualifications as council by ordinance shall prescribe and having terms of office of not more than three years. Any member is eligible to succeed himself. The board shall select from its members a president and secretary and the city treasurer is ex officio treasurer of the board and custodian of the pension fund, but has no vote as a member of the board.

HISTORY: 1962 Code Section 61‑382; 1952 Code Section 61‑382; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1979 Act No. 79 Section 2; 1997 Act No. 118, Section 1, eff upon approval (became law without the Governor’s signature on June 11, 1997).

Effect of Amendment

The 1997 amendment rewrote this section.

**SECTION 9‑13‑30.** City attorney shall advise and represent board.

 The city attorney or corporation counsel shall give advice to the board of trustees in all matters pertaining to its duties and the management of the firemen’s pension fund whenever thereunto requested and he shall represent and defend the board as its attorney in all suits or actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by the board.

HISTORY: 1962 Code Section 61‑383; 1952 Code Section 61‑383; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑40.** Rules and regulations; decisions on applications.

 The board of trustees of the firemen’s pension fund shall, by four‑fifths vote of its members, make all necessary regulations for its government in the discharge of its duties and may, if the pension fund be sufficient, provide by such regulation for benefits in addition to those provided for by this chapter and the conditions on which such benefits may be paid. The board of trustees shall hear and decide all applications for pensions under this chapter. Its decisions on such applications shall be final and conclusive and not subject to review or reversal except by the board.

HISTORY: 1962 Code Section 61‑384; 1952 Code Section 61‑384; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1979 Act No. 79 Section 3.

**SECTION 9‑13‑45.** Annual actuarial valuation of assets and liabilities.

 The board of trustees shall designate an actuary who shall, on the basis of regular interest and tables last adopted by the board, make an annual valuation of the contingent assets and liabilities of the system.

HISTORY: 1979 Act No. 79 Section 11.

**SECTION 9‑13‑50.** Investment of fund.

 The board of trustees may invest the pension fund in the name of “Board of Trustees of the Firemen’s Fund of the City of \_\_\_\_\_\_\_\_\_\_” in any of the following:

 (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

 (2) Obligations of the Federal intermediate credit banks, Federal home loan banks, Federal National Mortgage Association, banks for cooperatives and Federal land banks and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92‑181);

 (3) Obligations of this State;

 (4) In the shares of Federal savings and loan associations and State‑chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount covered by insurance.

 All such securities shall be deposited by the treasurer with other securities of the city and shall be subject to the order of the board of trustees.

HISTORY: 1962 Code Section 61‑385; 1952 Code Section 61‑385; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1974 (58) 2382; 1979 Act No. 79 Section 4.

**SECTION 9‑13‑60.** Selection of depository.

 A board of trustees of a firemen’s pension fund hereunder shall select a bank or banks in which all monies shall be deposited by the treasurer of the board.

HISTORY: 1962 Code Section 61‑386; 1952 Code Section 61‑386; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1955 (49) 260; 1979 Act No. 79 Section 5.

**SECTION 9‑13‑70.** Payments by treasurer to fund; collection of assessments.

 City councils of cities having boards of trustees of firemen’s pension funds under this chapter shall ordain and order that the city treasurer pay into the pension fund, semi‑annually at such dates as may be adopted by the respective city councils, the amounts as levied, the treasurer to report them to the secretary of the board of trustees to be entered on the records of the board at its next meeting. The collection of the assessments under this chapter shall be liable to the same enforcement as any other taxes under the laws of this State.

HISTORY: 1962 Code Section 61‑387; 1952 Code Section 61‑387; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑80.** Sources of funds.

 The funds for such pension fund shall be raised as follows:

 (1) The board of trustees may take by gift, devise or bequest any money, real estate, personal property or other valuable things and pay them into the pension fund;

 (2) All forfeitures and fines imposed upon any member of the fire department, by way of discipline, shall be paid into the pension fund;

 (3) All proceeds from sales of condemned or discarded personal property and equipment in use in the department may be paid into the pension fund;

 (4) The city council of any city having a board of trustees under this chapter may levy and collect such taxes as may be necessary and appropriate such monies as may be necessary to supplement and support such pension funds and may assess and collect from the salary of each member of the fire department an amount set by the board in accordance with a majority vote of the members of the fire department and pay such assessments into the pension fund;

 (5) Any funds remitted to the firemen’s pension fund derived from foreign insurance companies as provided in Chapter 57 of Title 38.

 Provided , however, that such funds shall not be restricted for such use by the participating fire departments.

HISTORY: 1962 Code Section 61‑388; 1952 Code Section 61‑388; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1979 Act No. 79 Section 6.

**SECTION 9‑13‑90.** Annual report of board.

 The board of trustees shall make a report to the city council of the condition of the pension fund within sixty days after the end of each fiscal year of the city.

HISTORY: 1962 Code Section 61‑389; 1952 Code Section 61‑389; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑100.** Record of proceedings.

 The board shall cause to be kept a record of all its meetings and proceedings.

HISTORY: 1962 Code Section 61‑390; 1952 Code Section 61‑390; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑110.** Interest on deposits or investments.

 In case the pension fund, or any part thereof, shall, by order of the board or otherwise, be deposited in any bank or invested as herein stated all interest or money which may be paid or agreed to be paid on account of such sums or deposit shall belong to and constitute a part of the fund. But nothing herein contained shall be construed as authorizing the treasurer to deposit such funds, or any part thereof, unless so authorized by the board.

HISTORY: 1962 Code Section 61‑391; 1952 Code Section 61‑391; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑120.** Disbursement of funds.

 All moneys ordered to be paid by the board of trustees shall be paid by the treasurer only upon warrants signed by the president of the board and countersigned by the secretary thereof or, in the absence of either one or both of such officers, by the president and secretary pro tem, as may be appointed by the board of trustees at a meeting called for that purpose, and no warrant shall be drawn except by order of the board, duly entered in the records of the proceedings of the board.

HISTORY: 1962 Code Section 61‑392; 1952 Code Section 61‑392; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑130.** Only regular members are eligible for pensions or other benefits.

 No person shall be entitled to receive any pension or other benefits from any such fund except a regularly paid member of a regularly organized fire department and in accordance with the provisions herein contained.

HISTORY: 1962 Code Section 61‑393; 1952 Code Section 61‑393; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

Attorney General’s Opinions

Proposed city ordinance which would provide that any employee, elected or appointed official who is employed, elected or appointed for one day or more while any particular city retirement benefit is in effect, shall have right as matter of contract to receive such benefit for duration of such employee’s retirement without any abatement by future action of city, would present certain legal problems, if adopted as drafted. It is well recognized that power to adopt ordinance carries with it power to amend ordinance. Ordinance may be viewed, in proper instance, as a contract, but where ordinance is treated as a contract it is generally subject to rules relating to ordinances in general. A office is usually not regarded as a contract or vested property right, but as a public trust to be exercised for benefit of public. Right to receive compensation for service as public officer is not contractual in nature. In addition, mutuality of consideration would be potential concern where ordinance purports to create valid contractual obligation. Op Atty Gen No 92‑11.

**SECTION 9‑13‑140.** Eligibility of person who was thirty‑five years of age when first employed as a fireman.

 No person who had or has attained thirty‑five years of age upon first becoming regularly employed as a member of the fire department shall ever be eligible for any benefits under this chapter unless he has been regularly and continuously a volunteer member of the same department since before he attained thirty‑five years of age.

HISTORY: 1962 Code Section 61‑394; 1952 Code Section 61‑394; 1945 (44) 236.

**SECTION 9‑13‑150.** Retirement after twenty‑five years of service.

 Any fireman who has served in the fire department in the city or who has served in fire departments of one or more cities that come within the terms of this chapter for a period of twenty‑five years shall, upon his written application, be retired and receive a monthly pension as provided by this chapter and applicable regulations, but in no event less than one hundred dollars. No fireman shall be required to so apply. This section shall also apply to those firemen retired prior to May 19, 1947, either because of physical disability or otherwise.

 Provided , however, that the provisions of this section shall not be construed to expand and obligate the pension system in order to comply with the provisions of this section.

HISTORY: 1962 Code Section 61‑395; 1952 Code Section 61‑395; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1946 (44) 1475; 1947 (45) 572; 1979 Act No. 79 Section 7.

LIBRARY REFERENCES

70 C.J.S., Pensions Section 4.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Shillito v. City of Spartanburg (S.C. 1948) 214 S.C. 11, 51 S.E.2d 95, 5 A.L.R.2d 863.

**SECTION 9‑13‑160.** Disability retirement.

 Any member of the fire department of any such city having a pension fund who shall, while in the performance of his duties in such fire department, become and is found, upon examination by a physician to be appointed by the board of trustees, to be physically or mentally disabled by reason of such service in such fire department to such extent that he is permanently unable to perform his accustomed tasks, shall be retired from service in such fire department by the board of trustees of the firemen’s pension fund upon the certificate of such physician and by a majority vote of the board.

HISTORY: 1962 Code Section 61‑398; 1952 Code Section 61‑398; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1947 (45) 572; 1979 Act No. 79 Section 8.

NOTES OF DECISIONS

In general 1

1. In general

Fireman partially disabled by injury held to be permanently disabled within meaning of statute applicable to City of Columbia where ten percent permanent impairment of function of back and ten percent permanent general bodily impairment rendered him physically unable to perform duties of firefighter. Knight v. Board of Trustees of Firemen’s Retirement and Pension Fund of Columbia Fire Dept. (S.C. 1977) 269 S.C. 671, 239 S.E.2d 720.

Standard for determining total and permanent disability is bottomed upon employee’s ability to resume former position; if one is unable by reason of permanently impaired health to return to position of employment formerly occupied, he should be deemed totally and permanently disabled. [Decision under analogous local law 1949 Sess. 293 (Section 61‑428 [1962 Code])]. Knight v. Board of Trustees of Firemen’s Retirement and Pension Fund of Columbia Fire Dept. (S.C. 1977) 269 S.C. 671, 239 S.E.2d 720.

**SECTION 9‑13‑170.** Amount of pension upon disability retirement.

 Upon such retirement the board of trustees shall order the payment to such disabled or retired member of such fire department monthly from the pension fund pursuant to regulations adopted by the board of trustees as authorized by this chapter, but in no event less than the sum of one hundred dollars a month.

HISTORY: 1962 Code Section 61‑399; 1952 Code Section 61‑399; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1946 (44) 1475; 1947 (45) 572; 1979 Act No. 79 Section 9.

NOTES OF DECISIONS

In general 1

1. In general

Statutory interpretation of meaning of term “permanent and total disability” by Retirement and Pension Fund Trustees does not involve administrative expertise to which Supreme Court must defer; it is therefore within court’s purview to interpret applicable statutes. [Decision under analogous local law 1949 Sess. 293 (Section 61‑428 [1962 Code])]. Knight v. Board of Trustees of Firemen’s Retirement and Pension Fund of Columbia Fire Dept. (S.C. 1977) 269 S.C. 671, 239 S.E.2d 720. Municipal Corporations 200(10); Public Employment 767(2)

Local law applicable to City of Columbia does not deal with disability which is less than total and permanent, but rather with pension which is less than that provided for total and permanent disability. Knight v. Board of Trustees of Firemen’s Retirement and Pension Fund of Columbia Fire Dept. (S.C. 1977) 269 S.C. 671, 239 S.E.2d 720.

Effect of 1946 Act. In 1946 the General Assembly enacted a statute, which is set forth word for word on page 1476 of the Acts, independent and complete in itself as to the amount of monthly pensions. [Treating the 1946 act as amending 1945 Act No. 161 [1945 (44) 236], to which it did not refer, both acts having amended Section 7532 of the 1942 Code]. Taylor v. Marsh (S.C. 1947) 211 S.C. 36, 43 S.E.2d 606.

Alleged insufficiency of fund to pay all benefits is no defense. The contention of the board of trustees of a firemen’s pension fund that the fund might not be large enough to pay all firemen who were eligible for retirement, would not deprive a fireman of his right to a judgment for pension benefits, and the fund could be paid out as far as it would go. Taylor v. Marsh (S.C. 1947) 211 S.C. 36, 43 S.E.2d 606. Municipal Corporations 200(1); Public Employment 392

**SECTION 9‑13‑180.** Effect of demotion for political reasons.

 Any person eligible for a pension under this chapter who has held the same position for five years with any department but who has been demoted for political reasons shall have his pension computed on the basis of the highest salary which he earned continuously for five years.

HISTORY: 1962 Code Section 61‑402; 1952 Code Section 61‑402; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑190.** Funeral benefits.

 Any regular member of such fire department, or any retired member after the completion of five years’ regular service, shall be entitled to a funeral benefit as set by board regulation having general applicability, upon death from any cause, such funeral benefit to be paid by the board of trustees from the pension fund to the nearest relative of such deceased fireman or pensioner.

HISTORY: 1962 Code Section 61‑403; 1952 Code Section 61‑403; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236; 1979 Act No. 79 Section 10.

**SECTION 9‑13‑200.** Proration of benefits when fund shall be insufficient.

 If at any time, from any unforeseen cause, there shall not be sufficient money in any such pension fund to pay each person entitled to the benefit thereof the full amount per month as herein provided, then an equal percentage of such monthly payment shall be made to each beneficiary until the fund shall be replenished sufficiently to warrant the resumption of payment thereafter of full pension pay to each of such beneficiaries, unless the city council shall by direct appropriation supplement the pension fund sufficiently to enable the board of trustees to pay the full amounts per month as herein provided.

HISTORY: 1962 Code Section 61‑404; 1952 Code Section 61‑404; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑210.** Fund shall contain minimum amount as a prerequisite to payment.

 No pensions or benefits shall be allowed, passed upon or paid by said board of trustees until there shall be in such pension fund at least one thousand dollars, exclusive of any anticipated tax, levy, appropriation or salary assessment.

HISTORY: 1962 Code Section 61‑405; 1952 Code Section 61‑405; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑220.** Record of retired firemen.

 There shall be kept in the office of the board of trustees by the secretary a book to be known as the list of retired firemen. This book shall give a full and complete history and record of all the actions of the board of trustees in retiring all persons under this chapter. Such record shall give names, dates of joining the department, dates of retirement and the reasons thereof, of all persons retired.

HISTORY: 1962 Code Section 61‑406; 1952 Code Section 61‑406; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.

**SECTION 9‑13‑230.** Fund and payments shall not be subject to execution or other legal process.

 No portion of any such pension fund shall, either before or after an order for its distribution by the board to such disabled and pensioned members of the fire department, be held, taken, subjected to or retained or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree or any process or proceeding whatsoever issued out of or by any court in this State for the payment or satisfaction in whole or in part of any debt, damage, claim, demand or judgment against any member, but such fund shall be sacredly held, kept, secured and distributed for the purpose of pensioning the persons, or the payment of funeral expenses, as named in this chapter, and for no other purpose whatsoever.

HISTORY: 1962 Code Section 61‑407; 1952 Code Section 61‑407; 1942 Code Section 7532; 1932 Code Sections 7551 to 7566; Civ. C. ‘22 Sections 4658 to 4673; Civ. C. ‘12 Sections 2968 to 2983; 1904 (24) 490; 1945 (44) 236.