

Opinion No. 2012-038

May 22, 2012

The Honorable Debra M. Hobbs  
State Representative  
3901 Arnold Avenue  
Rogers, Arkansas 72758-1640

Dear Representative Hobbs:

You have requested my opinion on the following questions regarding the Deferred Retirement Option Plan (DROP) for firefighters:

When a firefighter enters the DROP program as outlined in A.C.A. § [24-11-830],<sup>1</sup> is that person “retired” for the purpose of computing his benefits under A.C.A. § 24-11-818 and A.C.A. § 24-11-826, or is his retired status deferred until the end of the DROP term?

Example: A firefighter enters the DROP program after 25 years of service and then retires 10 years later. Are his final retirement benefits calculated as of the date of entering the DROP program or at the time of him leaving the DROP program?

**RESPONSE**

It is my opinion, consistent with previous opinions of this office and rules and regulations promulgated by the Arkansas Fire and Police Pension Review Board,

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<sup>1</sup> You cited A.C.A. § 24-11-818 as the applicable statute. However, DROP for firefighters is governed by A.C.A. § 24-11-830 (Supp. 2011). The “DROP” option is a retirement option available to a member of the local pension plan who has at least twenty years of credited service and is eligible to receive a service retirement pension. *Id.* at (a). Under the terms of the Plan, the member will continue to work and receive a salary, but the monthly pension benefit to which the member would have been entitled if he or she had actually retired will be paid into the plan account. *Id.* at (d)(3). When the member separates from service, he or she typically receives either a lump sum or a “true annuity” based upon the account. *Id.* at (f)(1).

that the firefighter who enters DROP is considered to be retired for purposes of calculating benefits under A.C.A. § 24-11-818.<sup>2</sup> With regard to A.C.A. § 24-11-826,<sup>3</sup> I assume this is the focus of your particular example involving a firefighter who enters DROP after 25 years of service. You have not stated whether the firefighter served *more* than 25 years. This is important information because as explained further below, this so-called “ago 60 benefit” is calculated based on the firefighter’s years of service *in excess of 25* prior to entering DROP. If he had more than 25 years of service when he entered DROP, then at 60 he will receive the benefit for the remainder of the DROP period. The benefit is calculated, however, on the basis of years served in excess of 25 before entering DROP, not years served while participating in DROP.

As explained by one of my predecessors when addressing the parallel statutes governing police pension plans, the DROP participant’s benefits are generally calculated at the date the member elects to enter DROP; and the benefits do not change with salary increases or extra service:

The law governing DROP provides that when a member elects to participate in DROP, “[t]he monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the [DROP account].” A.C.A. § 24-11-434(d)(3).<sup>4</sup> Subsection (e)(1) of the same statute provides that: “The member’s monthly retirement benefit shall not change, unless the plan receives a benefit increase.” A.C.A. § 24-11-434(e)(1) (emphasis added)<sup>5</sup>.... The intent of this provision, in my opinion, was that ***when a member elects to participate in DROP, his retirement benefits are frozen in time as of that moment. He is not to receive any increased benefits by virtue of salary increases he may receive in the interim, or reap the benefit of additional years***

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<sup>2</sup> Section 24-11-818 (Repl. 2002) is the general provision governing voluntary retirement benefits under a local fire pension and relief fund.

<sup>3</sup> This statute provides an additional benefit at age 60 for certain firefighters who continue working past their 25th year.

<sup>4</sup> The comparable statute applicable to firefighters is subsection 24-11-830(d)(3): “The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the plan account.”

<sup>5</sup> See subsection 24-11-830(e)(1) regarding firefighters.

*of credited service.* He may, however, receive the benefit of an across-the-board increase in benefits payable to pension plan participants generally.<sup>6</sup> *For purposes of his benefits being paid into the DROP account, he is to be treated as any other retiree.* His would-be pension benefits are simply deposited in a special account and held in abeyance while he continues to work and draw salary.<sup>7</sup>

My research has not disclosed any change in the applicable law on this point. Additionally, the rules and regulations of the Arkansas Fire and Police Pension Review Board (“PRB”) are clear in providing that “[t]he monthly benefit that will be received by the member after the DROP period is the retirement benefit as calculated at the date the member began DROP.”<sup>8</sup> The Board rule goes on to state:

The monthly benefit does NOT change after the DROP period. This same monthly amount is now paid to the individual member instead of into the DROP account.

The retirement benefit at the end of the DROP period:

Does **NOT** change with the increase in salary during the DROP period;  
Does **NOT** change with extra service during the DROP period;  
Is the **SAME** amount as was being credited to the DROP account.<sup>9</sup>

As the Board rule further explains, there are two exceptions to the above:

The age 60 bonus (*based on having over 25 years of service earned before the DROP period*) starts at age 60; any retiree raises granted

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<sup>6</sup> This is in accordance with A.C.A. §24-11-102 (Repl. 2002) (setting forth various review requirements to establish that a proposed increase is actuarially feasible, and outlining the conditions of approval by the governing body of the political subdivision).

<sup>7</sup> Op. Att’y Gen. 97-435 (emphasis added).

<sup>8</sup> PRB Board Rule #10, Sec. 8(C).

<sup>9</sup> *Id.* (emphasis original).

to all retirees, or overall benefit increases, may also be given to persons on DROP.<sup>10</sup>

The above-referenced “age 60 bonus” is based on A.C.A. § 24-11-826.<sup>11</sup> Because this benefit only applies to certain firefighters “who continue to work beyond their twenty-fifth year,”<sup>12</sup> I assume it is the focus of your particular example regarding a firefighter who enters DROP program after 25 years of service and then retires 10 years later. The answer to your question in this regard is that the firefighter’s final retirement benefits are calculated as of the date of entering DROP. If he did not have more than 25 years of service before entering DROP, he will not qualify for the age 60 bonus.

The basis for this conclusion is explained in the enclosed previous Attorney General opinion that addresses the identical so-called “age 60 bonus” statute for police officers: “Because the DROP participant does not accumulate further years of credited service, his enhanced benefit [the age 60 bonus] must be calculated on the basis of years served in excess of twenty-five years *prior* to entry into the DROP program.”<sup>13</sup> The opinion goes on to address the example of an officer with 28 years of service before entering DROP:

If an officer who is eligible for enhanced benefits under A.C.A. § 24-11-432<sup>14</sup> has twenty-eight years of credited service prior to entering the DROP program and works five additional years after entering the DROP program, his enhanced benefit would be calculated by multiplying 1.25% of his final salary multiplied by three years.<sup>15</sup>

As reflected by this opinion, therefore, the age 60 bonus under section 24-11-826 is calculated based on years served in excess of 25 years *before* entry into DROP.

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<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *See* n. 3, *supra*.

<sup>12</sup> A.C.A. § 24-11-826(a) (Repl. 2002).

<sup>13</sup> Op. Att’y Gen. 2001-372 at 3 (emphasis original).

<sup>14</sup> A.C.A. § 24-11-826 (for firefighters).

<sup>15</sup> Op. 2001-372 at 3.

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The DROP participant is not entitled to this bonus under section 24-11-826 for service performed while on DROP.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh

Enclosure