



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

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OPINION NO. 85-104

April 16, 1985

Senator Nick Wilson
4th District
P. O. Box 525
Pocahontas, Arkansas 72455

Dear Senator Wilson:

This is in response to your letter wherein you requested an opinion concerning the following question:

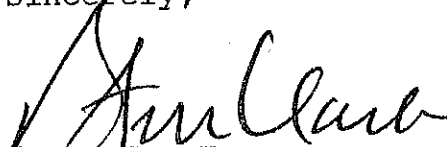
Since overtime pay cannot be used in the calculation of pension benefits under Ark. Stat. Ann. § 19-2204, can the employee fireman and the City stop withholding the 6 per cent from overtime pay that they are presently putting into the pension fund?

It would not appear that the City could properly stop withholding the required percentage from the fireman's overtime pay even though it is not eligible to be used in the calculation of benefits.

Ark. Stat. Ann. § 19-2221.1 involving the deduction uses the terms "salary or compensation." Ark. Stat. Ann. § 19-2204 involving the calculation of the amount of the pension uses only the term "salary." In Hestand v. Erke, 227 Ark. 309, 298 S.W.2d 44 (1957) the Arkansas Supreme Court held that overtime pay is not considered to be salary. Compensation, however, is generally considered to be broader in scope than salary and therefore would appear to include overtime pay.

The foregoing opinion which I hereby approve was prepared by Special Assistant Attorney General George A. Harper.

Sincerely,


STEVE CLARK
Attorney General

JSC:GAH:jk