

IN THE SUPREME COURT OF TEXAS

=====
No. 05-0587
=====

HOUSTON MUNICIPAL EMPLOYEES PENSION SYSTEM, PETITIONER

v.

CRAIG E. FERRELL, JR., ET AL., RESPONDENTS

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS
=====

Argued January 23, 2007

JUSTICE BRISTER, joined by JUSTICE O'NEILL, concurring.

I join fully in the Court's opinion and judgment. I write separately only to emphasize the unusual nature of this statute.

The 29 remaining plaintiffs assert the courts have jurisdiction to decide who should credit their pensions for time served in Houston's police academy. Apparently the City's pension system for police says cadets are covered by the City's pension system for general employees, while the latter says they are covered by the former. Despite its breathtaking 20,290 words, article 6243h (governing pensions for general employees) says nothing about this matter. Thus, to decide whether the plaintiffs should get that credit, someone must interpret the statute or supplement its terms.

The Legislature expressly provided that only the City’s pension board could do either — that the board could “interpret and construe this Act” and could “supply any omission.”¹ The statute also says that the board’s decisions in doing so “are final and binding on any interested party, including members.”² “Final and binding” means no appeal, unless the context says otherwise.³ This was surely no mistake, as the Legislature said the same thing about pension systems for Texas firefighters and police officers in cities large,⁴ small,⁵ and in-between.⁶

This ban on judicial review might look odd until one looks at the broader context. According to the list of prior laws in the statute books, the pension statute for the City’s police officers has been amended 33 times since 1947, while that for the City’s general employees has been amended 25 times since 1943. Of the 31 Legislatures that met from 1943 until 2003, all but five tinkered with one statute or both. Our legislators having decided they wish to be the final (and frequent) arbiter of disputes about how these pension systems should be run, we must leave them to it, as the Texas

¹ TEX. REV. CIV. STAT. art. 6243h, § (2)(x)(2)–(3).

² *Id.* § (2)(y).

³ *See City of Houston v. Clark*, 197 S.W.3d 314, 324 (Tex. 2006); *see also Sultan v. Mathew*, 178 S.W.3d 747, 752 (Tex. 2005).

⁴ TEX. REV. CIV. STAT. art. 6243e.2(1), § 2(j), art. 6243g-4, § 6(f).

⁵ TEX. REV. CIV. STAT. art. 6243p, § 5.03(d).

⁶ TEX. REV. CIV. STAT. art. 6243o, § 5.10(i).

Constitution expressly allows the Legislature to grant jurisdiction to administrative bodies rather than the courts.⁷

A different case might be presented if the plaintiffs alleged the board was clearly violating some provision of the statute. Article 6243h gives the pension board complete discretion to interpret the statute, but not to violate it. Had the Legislature meant for the board to do whatever it wanted, there would have been no reason for this palaverous statute. But the plaintiffs argue only that the board is misinterpreting the statute, a charge we cannot adjudicate without interpreting the statute ourselves. Exercising their constitutional prerogative, the Legislature has said the courts cannot do so. Accordingly, I agree with the Court that we cannot respond (as the plaintiffs request) “Oh yes we can.”

Scott Brister
Justice

OPINION DELIVERED: November 30, 2007

⁷ TEX. CONST. art. V, § 8 (“District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.”); *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994) (“[T]he jurisdiction of Texas courts — the very authority to decide cases — is conferred solely by the constitution and the statutes of the state.”).