

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 388
HOUSE BILL 936

AN ACT TO ESTABLISH WINSTON-SALEM FIRE-PUBLIC SAFETY
RETIREMENT FUND ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. That the name of the Association herein established shall be Winston-Salem Fire-Public Safety Retirement Fund Association, hereinafter referred to as the Association. References to the Association as of a date prior to July 1, 1973, shall mean the Winston-Salem Firemen's Retirement Fund Association, which was the name of the Association prior to such date.

Sec. 2. Subject to the provisions of Section 16 hereof, the following persons shall automatically be members of the Association:

(a) As of July 1, 1973, any person who is a member of the Association following the close of business of the Association on June 30, 1973;

(b) As of July 1, 1973, and thereafter, any person not covered under (a) above who shall have (i) been regularly and continuously employed full time by the Fire Department of the City of Winston-Salem (hereinafter referred to as the Fire Department), including any Fire Department mechanic or electrician, or by the Bureau of Public Safety of the City of Winston-Salem (hereinafter referred to as the Bureau of Public Safety), for a period of at least one year, and (ii) shall have attained his twenty-first birthday and shall not have attained his thirty-first birthday. For the purpose of this subsection (b), regular and continuous employment by the Bureau of Public Safety followed immediately by regular and continuous employment by the Fire Department shall be deemed to be regular and continuous employment by the Fire Department, and regular and continuous employment by the Fire Department followed immediately by regular and continuous employment by the Bureau of Public Safety shall be deemed to be regular and continuous employment by the Bureau of Public Safety.

(c) Notwithstanding the provisions of subsection (b) immediately preceding, as a condition to any person's becoming a member of the Association pursuant to the provisions of subsection 2(b) or 16(a), the Trustees may require such person to undergo a physical examination by a physician or physicians of good standing or repute selected by the Trustees. If it shall be found from such physician's report that such person is not in good physical or mental condition as of the date he would be eligible to become a member of the Association, such person shall be denied membership in the Association. The determinations of whether or not such person shall be required to undergo a physical examination and whether or not he is in good physical or mental condition shall be made by the Trustees. In making such determinations, all

persons similarly situated shall be treated alike. The cost of any medical examination required pursuant to the provisions of this subsection (c) shall be borne by the person seeking membership in the Association.

Sec. 3. The Association may provide and raise funds in any legal manner to be used as a pension fund for such person or persons as may be entitled thereto under the provisions of this act and to such extent as is hereinafter set out.

Sec. 4. The governing body of the Association shall consist of a Board of Trustees five in number, four from the membership of the Fire Department, and one to be appointed by the Insurance Commissioner of the State of North Carolina.

Sec. 5. The initial Board of Trustees hereunder shall be the Trustees of the Association as of the close of business of the Association on June 30, 1973. During the first 10 days of January 1974, an election shall be held for the purpose of electing by secret ballot four representatives from the Fire Department to be Trustees. Each fire company may, by majority vote of the active members of the company, nominate one candidate for election as Trustee. Only members of the Association, in good standing, who have continuously served in the Fire Department for a period of at least four years shall be eligible for election as Trustees. The four nominees receiving the largest number of votes cast in such election shall constitute the Trustees from the Fire Department. The two nominees receiving the highest number of votes cast in such election shall hold office for a period of four years. The other two nominees shall hold office for a period of two years. A tie shall be resolved by casting lots. In such election, each member of the Association in good standing may vote for four nominees.

During the first 10 days of January 1976, and during the first 10 days of January for each succeeding year evenly divisible by two, an election shall be held in like manner for the purpose of electing two representatives from the Fire Department to succeed the two Trustees whose terms of office are expiring. In any such election, each member of the Association in good standing may vote for two nominees. The two nominees receiving the largest number of votes cast in such election shall be elected. The Trustees elected in any such election shall hold office for four years.

No fire company shall be allowed to have more than one of its active members on the Board of Trustees at any one time.

Sec. 6. Any Trustee may resign at any time by giving notice in writing to the other Trustees. Should any Trustee who is a member of the Fire Department cease to be a member of the Fire Department for any reason, he shall automatically cease to be a Trustee. With regard to any Trustee elected by the members of the Association who resigns or ceases to be a Trustee for any reason, his successor shall be elected as provided in Section 5 of this act; provided, that such election shall be held as soon as practicable following such resignation or cessation, each member of the Association in good standing may vote for only one nominee, the one nominee receiving the highest number of votes shall be elected, and the election shall be only for the remaining unexpired term of the predecessor Trustee. Should the Trustee who was appointed by the Insurance Commissioner of the State of North Carolina resign or cease to be a Trustee for any reason, his successor shall be appointed by the said Insurance Commissioner.

Sec. 7. The Board of Trustees is herein fully vested with the exclusive right and authority to pay out the funds of this Association, as provided for in this act. All matters and claims provided for under this act shall be passed upon by said Trustees and all decisions and actions of said Trustees shall be binding upon the Association and the members thereof. Every Trustee shall be entitled to one vote except the chairman of the Board of Trustees, who shall be entitled to vote only to break a tie. At every annual meeting of the Board of Trustees, the Trustees shall elect a chairman, vice-chairman, secretary and treasurer. The secretary and treasurer need not be Trustees, and the offices of secretary and treasurer may be combined into a single office, in the discretion of the Trustees. The annual meeting of the Board of Trustees shall be held as soon as is practicable following the end of each calendar year at such place and at such time as shall be determined by the Trustees.

Sec. 8. The secretary of the Association (or the secretary-treasurer if such offices shall be combined into a single office) shall be entitled to receive compensation in an amount not to exceed one hundred dollars (\$100.00) per month, as determined by the Trustees. The Trustees, as such, including the chairman and vice-chairman, shall serve without compensation. The Trustees may authorize reimbursement by the Association to any officer or Trustee of the Association for all expenses incurred by such person in connection with services rendered in behalf of the Association.

Sec. 9. The Trustees shall elect a custodian of all funds and property of the Association, provided that such custodian shall have first offered proof satisfactory to the Trustees, by bond or otherwise, that it is and will be financially responsible for all property coming into its hands in a fiduciary capacity. Said custodian shall not release any of the funds or property of the Association except upon the written authorization of the Trustees.

Sec. 10. A special meeting of the Board of Trustees may be called by the chairman or vice-chairman, or by any two Trustees, upon 24 hours' written notice delivered in person to the members of said Board or mailed to the last known address of each member of said Board. A majority of the Trustees in office shall constitute a quorum at any meeting and a majority vote of the Trustees at a meeting at which a quorum is present shall constitute action by the Trustees.

Sec. 11. The chairman of the Board of Trustees, when present, shall preside at all meetings. In the absence of the chairman, the vice-chairman shall act as chairman.

Sec. 12. The secretary shall keep in complete form such data as shall be necessary for actuarial valuation of the funds of the Association and for checking the disbursements for and on behalf of the Association. He shall keep minutes of all proceedings of the Board of Trustees and of the Association, and the same shall be kept in a place selected by the Trustees. The secretary of the Association shall post yearly at each fire station and at the office of the Bureau of Public Safety, as soon as practicable following the end of each year, a financial statement of the Association.

Sec. 13. The treasurer of the Association shall deposit with the custodian all property and money that may come into his hands for the Association. The said treasurer shall obtain a receipt from the custodian for all money or property delivered to the custodian by the treasurer. Said custodian shall invest such cash coming into its

hands in such property or securities as may be authorized in writing by a majority vote of the Trustees. Said custodian shall, upon the written authority of the Trustees, dispose of any of the property or securities which it may have on hand and reinvest the proceeds from the sale thereof in such property or securities as may be so authorized by the Trustees, and such custodian shall not be liable to the Association for any losses which may be sustained by reason of investments made under the authority given by the Trustees. Without intending to limit the investment powers of the Trustees, the Trustees are specifically authorized and empowered to invest funds of the Association by depositing such funds with the Winston-Salem Firemen's Credit Union on condition that the Association shall receive the net earnings from the investment by such credit union of any funds so deposited.

Sec. 14. The custodian shall receive such compensation for services rendered as may be agreed upon in writing by the custodian and the Trustees. The Trustees shall have the authority to employ legal counsel when, in the opinion of the Trustees, legal counsel is necessary. In case of such employment, said counsel shall be paid such fees as may be fair and reasonable as agreed upon in writing by the Trustees and the counsel so employed.

Sec. 15. All property of the Association is hereby relieved from any and all claims of persons entitled to relief from the Winston-Salem Firemen's Relief Fund. The North Carolina Firemen's Association, its officers, members, boards and committees, are also hereby relieved of any claim of any kind whatsoever which may be based on past service, present service or future service in the Winston-Salem Fire Department. The Firemen's Relief Fund of the City of Winston-Salem, and the officers, members, boards and committees of said Fund are also hereby relieved of any claim of any kind whatsoever which may be based on past, present or future service in the Winston-Salem Fire Department, if any, so long as any claimant is entitled to benefits under the provisions of this act.

Sec. 16. (a) Notwithstanding the provisions of Section 2 hereof, a person who is not a member of the Association on June 30, 1973, and who is an employee of the Bureau of Public Safety on July 1, 1973, shall become a member of the Association as of the date he first meets the requirements for membership as provided in subsection 2(b) hereof, provided he files a written election with the Trustees within 60 days following the date he first meets such requirements. If he fails to file such election in timely manner, he shall forfeit his right to become a member of the Association.

(b) Effective on and after July 1, 1973, any member of the Association whose employment is transferred from the Fire Department or Bureau of Public Safety to the Police Department of the City of Winston-Salem (referred to herein as the Police Department), may elect to continue to be a member. Such election shall be in writing filed with the Trustees at any time prior to such transfer of employment. If such election is not filed, such transfer of employment shall be treated as a resignation from the employment of the City of Winston-Salem as provided in Section 22 hereof.

(c) Notwithstanding the foregoing provisions of this Section 16, or the provisions of Section 2 hereof, each of the former employees of the Fire Department who was transferred to the Police Department during the calendar year 1972 and who,

as a result of such transfer of employment and consequent termination of membership in the Association, received distributions from the Association equal to the monies paid into the Association by him, may again become a member of the Association by filing a written election for membership with the Trustees by no later than the close of business of the Association on August 30, 1973, and by paying to the Association the sum of the amount distributed to him by the Association upon his transfer of employment plus the amount he would have contributed to the Association following such transfer had he continued to be a member of the Association. If any such former employee of the Fire Department fails to make such timely election, he shall forfeit his right to become a member of the Association.

(d) If any person elects under subsection (b) or (c) immediately preceding either to continue to be a member of the Association or to rejoin the Association, as the case may be, he shall pay to the Trustees each month, prior to the close of the month for which the payment is being made, the same amount as is required under Section 17 hereof to be deducted each month by the Treasurer of the City of Winston-Salem from the salary of members of the Association employed by the Fire Department or Bureau of Public Safety. If any such person electing to continue as a member of the Association or to rejoin the Association shall fail to make any payment due to the Trustees in timely fashion, and such failure shall continue for 60 days or more, such person shall be deemed to have resigned from the employment of the City of Winston-Salem as provided in Section 22 hereof as of the close of such 60-day period.

Sec. 17. The Treasurer of the City of Winston-Salem shall make a monthly deduction from the salary of each member of the Association (except for members in the employ of the Police Department) due him by the City of Winston-Salem in the amount directed in writing by the Trustees, not to exceed ten dollars (\$10.00) per month, and the amount so deducted shall be turned over monthly by the said Treasurer to the treasurer of the Association, who in turn will deliver the same to the custodian of the Association as hereinbefore provided, and the Association shall have the authority to accept donations from any and all sources whatsoever.

Sec. 18. If at any time there shall not be sufficient assets in the retirement fund of the Association to pay fully the persons entitled to benefits provided herein, such person shall be paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be determined by the Trustees; provided, that the assets of such fund determined as of the close of any fiscal year of the Association shall in no event be less than four hundred thousand dollars (\$400,000).

Sec. 19. Whenever any member of the Association has been employed by the City of Winston-Salem continuously for a period of at least 30 years, such member may make written application to the Trustees for such benefits as he may be entitled to receive under this act; provided, however, that such member must retire from the service of the City to receive such benefits. The benefits of such member shall be a monthly pension for the remainder of his life, as provided hereinbelow. For this purpose and for the purpose of Section 20 hereof, a member shall be deemed to have been employed by the City of Winston-Salem continuously if such member shall have been employed continuously by any combination of the Fire Department, Bureau of Public

Safety or Police Department (but only such employment by the Police Department as is described in subsections 16(b) and (c) hereof), and the transfer of a member from the employ of one of such organizations to the employ of another of such organizations shall not be deemed to be a termination of employment by the City of Winston-Salem.

In the case of a member who retires on or after July 1, 1973, and on or before June 30, 1974, such pension shall be seventy-five dollars (\$75.00) per month. In the case of a member who retires on or after July 1, 1974, such pension shall be one hundred dollars (\$100.00) per month. Payments shall be subject to the provisions of Section 18 of this act.

Sec. 20. Whenever any member of the Association becomes totally and permanently unable, because of infirmity or disease affecting mind or body (whether or not induced by injury) to perform his duties for the City, which inability shall be determined by a medical examination by a physician or physicians of good standing and repute selected by the Trustees, he shall be deemed to be a disabled member. If a disabled member has been employed by the City of Winston-Salem for at least five full years prior to suffering disability, he shall be entitled to retire and receive a monthly benefit payable for the remainder of his life.

In the case of such a disabled member who retires on or after July 1, 1973, and on or before June 30, 1974, such monthly benefit shall be equivalent to three dollars (\$3.00) multiplied by the number of full years of his service in the employment of the City, not to exceed seventy-five dollars (\$75.00) per month. In the case of such a disabled member who retires on or after July 1, 1974, such monthly benefit shall be equivalent to four dollars (\$4.00) multiplied by the number of full years of his service in the employment of the city, not to exceed one hundred dollars (\$100.00) per month. Payments shall be subject to the provisions of Section 18 of this act.

Notwithstanding the foregoing provisions of this Section 20, in the case of a disabled member whose disability shall arise out of injuries incurred in fire safety activities, such as fire fighting, fire training and fire inspection, such monthly benefit shall in no event be less than forty dollars (\$40.00) per month, whether or not such disabled member was employed by the City of Winston-Salem for at least five years prior to suffering such disability. The determination of whether such disability arises out of injuries incurred in fire safety activities shall be made by the Trustees.

Sec. 21. Any disabled member of the Association who retires under Section 20 hereof and who had not been employed by the City of Winston-Salem for a period of at least 30 years prior to retirement, shall be subject to call by the Trustees for reexamination by a physician of good standing and repute selected by the Trustees and, if based upon such examination it is determined by the Trustees that such member is able to perform active duties for the City, such member may be reinstated and receive for his services the same compensation paid to other employees of the City of his rank or classification. If such member, upon being called by the Trustees, shall refuse to submit to an examination or shall refuse to be reinstated to active duty in the employ of the City after being found to be able to perform active duty, such benefits as he is then receiving under the provisions of this act shall immediately terminate and his membership in this Association shall automatically terminate. But in the event that such

member is physically unable to resume active employment, or in the event he is able and willing to resume active employment but no job with the City is open for him at such time, his pension or compensation shall continue until there shall be an opening for such member and he is reemployed by the City. For the purpose of this Section 21, employment with the City of Winston-Salem shall mean only employment with the Fire Department, Bureau of Public Safety, or Police Department (but employment with the Police Department shall be included only with regard to any such member who was employed with the Police Department prior to his retirement under Section 20 hereof).

Sec. 22. When any member of the Association shall resign or be dismissed from employment by the City of Winston-Salem (which for this purpose shall include only employment with the Fire Department, Bureau of Public Safety or Police Department), he shall receive a sum of money equal to all monies paid into the Association by him. Upon the death of any member of the Association while in the employment of the City, a sum of money equal to all monies paid into the Association by such deceased member shall be paid to the beneficiary or beneficiaries designated in writing by such deceased member, or in default thereof, to his estate. If, after retirement, a member of the Association shall die before having received an amount equal to his contributions to the Association, there shall be paid to the beneficiary or beneficiaries designated by such member, or in default thereof to his estate, an amount equal to his contributions less the sum of retirement benefits paid to such member. The reimbursements provided in this Section 22 shall be in cash in a lump sum, unless otherwise determined by the Trustees with the consent in writing of the recipient thereof.

Sec. 23. No amount payable or held by the Association under this act for the benefit of any member or beneficiary thereof shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, nor shall any amount payable or held under this act for the benefit of any member or beneficiary thereof be in anywise liable for his debts, contracts, liabilities, engagements, or torts, nor be subject to any legal process to levy upon or attach, but the provisions of this Section 23 shall not be applicable as regards any dealings with or obligations to the Winston-Salem Firemen's Credit Union.

Sec. 24. Out of the amount paid to the Insurance Commissioner of the State of North Carolina upon the amount of all premiums on fire and lightning policies covering property situated in the corporate limits of the City of Winston-Salem, the Insurance Commissioner of the State of North Carolina shall pay annually to the treasurer of the City of Winston-Salem ninety-five percent (95%), and the Treasurer of the City of Winston-Salem shall immediately pay over the same to the treasurer of the Association.

Sec. 25. No member of this Association or Trustee shall be personally liable in any manner whatsoever to any person, association, firm or corporation by reason of his connection with, or act or acts on behalf of, said Association, unless such act or acts are fraudulently committed.

Sec. 26. If a member of the Association, or an employee of the Fire Department or Bureau of Public Safety who is not a member of the Association due to

failure to meet the length of service or minimum age requirements of subsection 2(b) hereof, is granted a leave of absence from employment by the City of Winston-Salem on account of accidental injury or temporary illness, military service during time of active warfare, compulsory military service in time of peace, or other good cause, for the purpose of this act such employee shall be deemed to have remained in the employment of the City during the period of such leave of absence or any extension thereof if he shall return to active service with the City promptly following the end of the period of such leave of absence or extension thereof. During such leave of absence or extension thereof, the Treasurer of the City of Winston-Salem shall make no deductions from the salary, if any, of such member, and such member shall not otherwise be required to make any contributions to the Association during or with respect to such period.

Sec. 27. If any person entitled to benefits under this act shall be physically or mentally incapable of receiving or acknowledging receipt of such benefits, the Trustees, upon receipt of satisfactory evidence of such incapacity and that another person or institution is maintaining such person entitled to benefits, and that no guardian or committee has been appointed for him, may cause any benefits otherwise payable to him to be made to such person or institution so maintaining him.

Sec. 28. The provisions of this act shall be administered on an equitable and nondiscriminatory basis, it being the intent hereof that where the Trustees are given discretionary powers, such powers shall be exercised in an equitable manner and so as to prevent discrimination between persons similarly situated. All assets of the Association shall be administered for the exclusive benefit of the members of the Association and their beneficiaries, and as a fund to provide for such members or beneficiaries the benefits provided in this act. It shall be impossible for any part of the principal or income of the retirement fund of the Association to be used for or diverted to purposes other than for the exclusive benefit of the members of the Association or their beneficiaries as provided in this act; except that the Trustees may use such assets to pay the reasonable expenses incurred in administering the said fund and any debts, liabilities or obligations of said fund. The assets and income of the fund shall be exempt from all taxes, including income taxes, imposed by the State of North Carolina or any political subdivision thereof.

Sec. 29. The fiscal year of the Association shall end on June 30 of each year.

Sec. 30. Throughout this act, use of the masculine pronoun shall include the feminine.

Sec. 31. If any part or section of this act shall be declared unconstitutional or invalid by the Supreme Court of North Carolina or any other court of last resort of competent jurisdiction, it shall in no wise affect the remainder of this act, and the remainder shall remain in full force and effect.

Sec. 32. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 33. Effective as of July 1, 1973, this act amends and supersedes in its entirety Chapter 402 of the North Carolina Session Laws of 1947, and as heretofore amended.

In the General Assembly read three times and ratified, this the 8th day of May, 1973.