

# **Bond Case Briefs**

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## **PENSIONS - TEXAS**

### **Van Houten v. City of Fort Worth**

**United States Court of Appeals, Fifth Circuit - July 1, 2016 - F.3d - 2016 WL 3595777**

In separate lawsuits, police officers and firefighters brought an action against the city, alleging the city's reforms to its public employee pension plan violated provision of Texas constitution forbidding reduction of public pension benefits accrued by a person.

The United States District Court granted summary judgment in favor of the city in both actions. Appeals were consolidated.

The Court of Appeals held that:

- Provision did not prohibit pension reform that would decrease expected, but as-yet unearned, benefits;
- City's reform of its pension by altering the rate at which future benefits accrued did not violate provision; and
- City's pension reform which allowed participants who elected to be subject to variable cost-of-living adjustment (COLA) to revert to fixed 2% COLA did not violate provision.

As predicted by the Fifth Circuit Court of Appeals, provision of the Texas constitution forbidding reduction of public pension benefits accrued by a person did not prohibit pension reform that would decrease expected, but as-yet unearned, benefits. Provision only prohibited reduction or impairment of benefits accrued.

City's reform of its public employee pension plan by altering the rate at which future benefits accrued, going from a High 5 approach to bifurcated High 3/High 5 approach, did not violate provision of Texas constitution forbidding reduction of public pension benefits accrued. Reform protected accrued benefits and only impacted rate at which future benefits accrued.

City's reform of its public employee pension plan to allow participants who elected to be subject to variable cost-of-living adjustment (COLA), guaranteed only to be within 0% and 4%, to revert to fixed 2% COLA rate did not violate provision of Texas constitution forbidding reduction of public pension benefits accrued. Provision did not protect against risk of downward fluctuations inherent in variable rates.