EXHIBIT B

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Bruce W. Green
City Attorney
City of Lufkin

300 East Shepherd
P.O. Drawer 190
Lufkin, Texas 75902-0190
(936)-633-0260
Fax: (936) 633-0381
email:
bgreen@cityoflufkin.com

January 17, 2013

Ms. Diana S. Russell
Plan Administrator
Firemen's Relief & Retirement Fund
City of Lufkin
300 E. Shepherd
Lufkin, Texas 75902

LEGAL OPINION NO. 13-01

RE: Whether the Board violated TLFFRA Statute, Section 7 procedure in enacting the Heart Act Amendment; whether, as an "at risk" fund, the Heart Act even applies to the Fund; and whether, when voting to enact the Heart Act Amendment, the Board violated the Fund Provisions/Plan Document requirement that: "For any benefit change which may have a net negative effect to the Plan, there must be two regularly scheduled actuarial studies done and must be in agreement before the participating members vote".

Dear Ms. Russell:

You ask specifically: (1) Whether the Lufkin Firemen's Relief & Retirement Fund Board ("Board") violated the Texas Local Fire Fighters' Retirement Act, Section 7(b), (1) and (2) when the Board recently voted to amend the Fund Provisions/Plan Document to add the Heart Act Amendment without approval by an eligible actuary selected by the Board and without a majority vote of the participating members of the Plan; (2) Whether the Heart Act applies to the Lufkin Plan, given the "at risk" status of the Plan; and (3) Whether the Board violated its Plan when it voted to enact the Heart Act Amendment without having two regularly scheduled and agreed actuarial studies done prior to a vote by the participants in the Plan.

WHETHER THE BOARD VIOLATED § 7(B), (1) AND (2) OF THE RETIREMENT ACT

This provision of the Texas Local Fire Fighters' Retirement Act deals with modification of benefits and eligibility and requires that "before a board of trustees chooses to adopt or change a benefit or requirement for payment of benefits . . . the proposed addition of change must be approved by . . ." an actuary selected by the board and a majority of participating members. The

Heart Act amendment was unanimously adopted by the Fund Board On November 28, 2012, without approval by an actuary or a majority vote of the Plan participants.

Upon review, the amendment adopted by the Board in November does not obviously adopt or change a benefit or requirement for payment of benefits under § 7 of the Texas Local Fire Fighters' Retirement Act. Moreover, the amendment is obligatory under federal law and thus compliance with federal law supersedes any plan document.

Specifically, the Heart Act adds Internal Revenue Code Section 401(a)(37), which *requires* that all qualified retirement plans (as well as Section 403(b) and Section 457(b) plans) provide a beneficiary of a participant who dies while performing qualified military service with any additional benefits (such as accelerated vesting, ancillary life insurance, or other benefits contingent on the employee's termination of employment on account of death) that would have been provided under the plan had the participant died while in active service of the employer. However, benefit accruals for the period of service between cessation of civilian employment and death are not *required* unless the plan provides otherwise. The death benefits provision was retroactive—it applies to deaths occurring on or after January 1, 2007. Under federal law, plans must be amended to comply with this requirement by the end of the first plan year that begins on or after January 1, 2010. Government plans, like that of Lufkin, must comply with these rules by adopting an amendment by the end of the first plan year that begins on or after January 1, 2012.[1]

WHETHER THE HEART ACT APPLIES TO THE LUFKIN PLAN GIVEN THE "AT RISK" STATUS OF THE PLAN

Neither the plain terms of the Heart Act itself, nor any guidelines provided by the Internal Revenue Service make reference to any exemptions from the requirements of the Act for "at risk" plans.

WHETHER THE BOARD VIOLATED ITS PLAN WHEN IT ADOPTED THE AMENDMENT WITHOUT HAVING TWO REGULARLY SCHEDULED AND AGREED ACTUARIAL STUDIES DONE PRIOR TO A VOTE BY PARTICIPANTS OF THE PLAN.

The Lufkin Plan incorporated the requirement on October 30, 2007 that: "For any benefit change which may have a net negative effect to the Plan, there must be two regularly scheduled actuarial studies done and must be in agreement before the participating members vote." For the reasons mentioned above in the first question, this Lufkin Plan provision does not apply to the recent amendment adoption. Even if the Heart Act amendment is interpreted to constitute a "benefit change which may have a net negative effect to the Plan", it is required by federal law, which supersedes this Lufkin Plan provision.

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[1]This IRC provision also makes clear what happens to a plan that does not meet this requirement: "Death benefits under userra-qualified active military service.— A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414 (u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death."

SUMMARY

Even if reasonable minds might differ as to the Heart amendment's effect on existing plans, § 401(a)(37) of the Internal Revenue Code is a mandatory provision for all 457(b) plans. As such, it supersedes any plan requirements that would hinder its adoption. Thus, the Lufkin Board's adoption of the amendment in November was a simple legislative act required by federal law. It did not therefore violate any provisions of the Texas Local Fire Fighters' Retirement Act or the Lufkin Firemen's Relief & Retirement Fund Plan. As for whether the Heart Act applies to plans that are designated "at risk", no published evidence exists to the contrary that could be found at the time of this writing.

Sincerely,

Bruce W. Green