

**City Firemen—In Cities of First and Second Classes—
Number of Hours They May be Required to Remain in At-
tendance and Subject to Call.**

Chapter 91 of the Laws of 1917 construed to mean that firemen of cities of the first and second classes may not be required to remain in attendance and subject to call for duty longer than fourteen out of every twenty-four hours of the day except in case of necessity.

R. S. Mentrum, Esq.,
State Fire Marshal,
Helena, Montana.

My dear Mr. Mentrum:

You have submitted for my opinion the following question:

May firemen in cities of the first and second classes legally be required to remain in attendance and subject to call for duty longer than fourteen out of every twenty-four hours of the day?

Chapter 91 of the Laws of 1917 is as follows:

"An Act to Regulate the Hours of Continuous Employment of Firemen in Cities of the First and Second Class.

"Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. No fireman, or member or employee of the Fire Department of cities of the first and second class, shall be required to be on continuous duty to exceed fourteen (14) hours of each twenty-four (24) hour day, save and except the Chief of such Department, who shall be subject to call at any time; Provided, that the Chief of any Department, or a Captain thereof, may in their discretion, in cases of necessity, recall to service any member or employee of the Fire Department then off duty, who shall be needed by such Department at the time called.

"Section 2. The City Councils or Commissioners of cities of the first and second class, shall have power to establish and promulgate rules and regulations governing the employment of the members or employees of their respective fire departments, not inconsistent with this Act."

The provisions of the foregoing statute are clear and unambiguous. The title of the chapter states the purpose of the Act, which is to "regulate the hours of continuous employment of firemen," and it is mandatory except as to the proviso therein contained. It provides that except as to the chief of the fire department the employees may not be required to be on continuous duty to exceed fourteen hours of each twenty-four hour day, with the further exception that "in cases of necessity" the other members or employees may be "recalled to service." The phrase "may in their discretion in cases of necessity, recall to service any member or employee of the Fire Department then off duty" specifically recognizes a time when firemen shall be off duty. If he could be and was held in "attendance" there would be no necessity or indeed possibility of "recalling" him. The Act contemplates that they shall be recalled to service in emergencies, not that they shall be kept in constant attendance amounting to being on duty. Section 2 also provides that rules may not be made inconsistent with the Act, and rules or instructions placing upon firemen the burden of being in attendance so as virtually to be on duty would be neither within the terms nor the spirit of the Act.

I am, therefore, of the opinion that the matter is controlled by Chapter 91, *supra*, and that firemen, members or employees of fire departments may not legally be required to remain in attendance and subject to call for duty longer than fourteen out of every twenty-four hours of the day, except in case of necessity as prescribed by said chapter.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.