

**Firemen's Relief Fund—Power of City to Compel the Return of Funds to City Treasurer—May Firemen's Relief Association Return Fund to City Treasurer Without Dissolving Association.**

Chapter 129 of the Laws of 1911 held not to repeal Sections 3337 and 3341 of the Revised Codes of 1907.

The city administration has no power to compel the Fire Department Relief Association to return its fund to the City Treasurer.

The members of the Relief Association, with the consent of the Council of the city, may dissolve the association and return the funds thereof to the City Treasurer, but such funds cannot be so returned without a dissolution of the Relief Association.

George P. Porter, Esq.,

State Auditor and Commissioner of Insurance, ex-officio,  
Helena, Montana.

My dear Mr. Porter:

You have requested my opinion relative to the handling of the funds of a Firemen's Relief Association organized under the provisions of Chapter 129 of the Laws of 1911, as amended by Chapter 49 of the Laws of 1915, as further amended by Chapter 66, Laws of 1919.

Your particular questions thereon are as follows:

"1. Did Chapter 129, Laws of 1911, repeal Sections 3337 to 3341, Revised Codes?

"2. Can the City Administration compel the firemen to return the funds to the City Treasurer under control of the Board of Trustees?

"3. May a majority of the firemen return the funds to the City Treasurer to be controlled under Sections 3337 to 3341 Revised Codes, without a dissolution of their association?"

1. Section 3337 to 3341, inclusive, were enacted in 1907, and provided for the creation, management and control of the "Disability Fund" for the relief of members of the Fire Department of the city or town, who might be disabled in line of duty. By this Act, a Board of Trustees consisting of the Mayor, Clerk, Attorney, Chief of the Fire Department and one member of the Fire Department elected by a majority of the members, was created. The fund was raised by taxation for that purpose, held in the custody of the City or Town Treasurer and disbursed on order of the City or Town Council upon the written recommendation of a majority of the said Board of Trustees.

Chapter 129, Laws of 1911, empowered the members of a Fire Department of an incorporated city to organize themselves into an association under the name of "Fire Department Relief Association of the City of ....." (naming the city), and to elect their own officers thereof, including a president, secretary and treasurer. The treasurer was to be bonded and thereupon empowered to receive from the County Treasurer all the money belonging to or coming into the "Disability Fund" provided for by Sections 3337 to 3341, inclusive.

While this Act contains the usual clause or section that "all other Acts and parts of Acts in conflict herewith are hereby repealed," it does not appear to have been the intention of the Legislature to repeal Sections 3337 to 3341, but merely to provide an additional method of handling this "Disability Fund" at the option of the members of the Fire Department and the Council of the city concerned. You will note that the sections cited apply to either a city or town, while Chapter 129, supra, applies to incorporated cities only. As further evidence that there was no intention to repeal the above cited sections, said Chapter 129 provides that one of the sources of the fund shall be from "taxation under Section 3336," and refers to "such association and such board of trustees" several times.

I am, therefore, of the opinion that said Sections 3337 to 3341, Revised Codes of 1907, are not repealed by said Chapter 129, Laws of 1911, but are in force in all towns and in all incorporated cities where the members of the Fire Department and Council have not availed themselves of the option or privilege of forming a Relief Association as provided in Chapter 129, *supra*.

2. When the members of a Fire Department, with the consent of the Council, organize themselves into a "Fire Department Relief Association," and elect a treasurer who qualifies for the office by filing a bond as provided in Section 6 of said Chapter 129, it becomes the duty of the City Treasurer to deliver to the treasurer of the Relief Association all moneys in his hands or thereafter received by him belonging to the Disability Fund, taking a proper receipt for the same. When this is done, the control of such funds passes from the Board of Trustees provided by Section 3337, Revised Codes of 1907, into the control of the Relief Association and its treasurer, who have full charge, management and control of the funds thereafter (Section 13), and the Board of Trustees or the City Council have no further control thereof.

I am, therefore, of the opinion that the city administration has no power to compel a duly and legally created Fire Department Relief Association to return its funds to the City Treasurer.

3. There is no provision made by Chapter 129, *supra*, or any of its amendments, for a dissolution of a Fire Department Relief Association after the same is once organized, unless it should be incorporated under the laws of the State, in which case the laws for dissolution would apply.

Since it can be organized only by the members of the Fire Department and with the consent of the Council of the city concerned, I can see no reason why it cannot be dissolved in the same manner.

It is, therefore, my opinion that the members of the Relief Association, with the consent of the Council of the city, may dissolve the association and return the funds thereof to the City Treasurer to be handled as provided for by Sections 3337 to 3341, inclusive, Revised Codes of 1907, but that such funds cannot be so returned without a dissolution of the Relief Association, since both the Board of Trustees and Relief Association cannot exist in the same city at the same time, as there would be a conflict of authority between them.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.