

## No. 109

**CITIES AND TOWNS—FIRE DEPARTMENT RELIEF ASSOCIATIONS—LEAVES OF ABSENCE FOR MILITARY SERVICE—ACTIVE DUTY—BY-LAWS**

- Held: 1. A Fire Department Relief Association may provide by its By-Laws for leaves of absence for military service and that time spent in such service may be considered as "active duty" in determining eligibility for pension benefits.
2. The provisions of Chapter 150, Laws of 1941, apply to members of fire departments and fire department relief associations.

May 7, 1941.

Mr. John J. Holmes  
State Auditor and Ex-Officio  
Insurance Commissioner  
State Capitol  
Helena, Montana

Dear Mr. Holmes:

You have forwarded a request for an opinion from the Cascade Fire Department Relief Association, as follows:

"Under the Selective Service Act we have lost some members of our fire department. They have asked for a leave of absence.

"Can we issue them such, without their losing the time they have served in the department, so that when they return they can be reinstated and still have the time they have served to their credit?"

"We have already filled the vacancies which exist, with temporary appointments at our own discretion.

"If you could enlighten us on this subject, we would be very grateful."

The Twenty-Seventh Legislative Assembly of Montana, 1941, recognizing the public policy as expressed in the Federal Selective Service Act, enacted Chapters 47 and 150, Laws of 1941. Chapter 47 relates to State and County officers, while Chapter 150 is designed to cover all other employees. Sections 1 and 3 of Chapter 150 provide:

"Section 1. Any person inducted into the land or naval forces of the United States, as a result of the operation of the 'Selective Training and Service Act of 1940,' or the 'National Guard and Reserve Officers' Mobilization Act,' Pub. Act. No. 783 and Pub. Res. No. 96, Seventy-sixth Congress, who has satisfactorily completed his period of training and service as attested by a certificate to that effect, shall be re-employed in the position he left in order to perform such training and service if (1) he is still qualified to perform the duties of such position, (2) the position he formerly held was not a temporary one and (3) he makes application for re-employment within forty days after he is retired from training service."

"Section 3. Any person who is restored to a position in accordance with this Act shall be considered as having been on leave of absence during his period of training or service in the land or naval forces of the United States, and at the expiration of such period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with the established rules and practices relating to employees on leave of absence, and shall not be discharged from such position without cause within one year after restoration."

It is clear the provisions of this Act are broad enough, considering the intention of the Legislature, to apply to members of fire departments

and consequently to those members who are also members of the relief association.

It might not be amiss here to suggest the association adopt a by-law expressing the policy of the association to conform to that of the State and Federal government. This by-law could provide for leaves of absence for members entering the service during the emergency and that the time spent therein would not deprive them of any rights or privileges to receive benefits under the provisions of the statutes relating thereto.

Sincerely yours,

JOHN W. BONNER  
Attorney General