

No. 333

FIREMEN'S RELIEF ASSOCIATIONS—
CITIES AND TOWNS

Held: When and if a voluntary fire department is abolished and replaced by a paid department alone, the articles of incorporation of the Fire Department Relief Association should be amended to provide only for paid firemen as members and as recipients of benefits; or a new relief association should be created, providing only for paid membership consisting of the members of the paid department and for payment of benefits with respect to such members. If the existing Relief Association members consist only of volunteers, it seems necessary to create a new corporation since it may be at least doubtful whether the old association, organized under the volunteer department only, has any legal existence after the volunteer department has been abolished and replaced with a paid department.

January 3, 1942.

Hon. John J. Holmes
State Auditor and Ex-Officio
Commissioner of Insurance
State House
Helena, Montana

Attention: Mr. Arthur C. Parsons
State Fire Marshal

Dear Mr. Holmes:

You have asked this office for an opinion on the payment of pensions by the Miles City Fire Department Relief Association which was organized in 1913 under a Volunteer Fire Department. Although the fire department at Miles City is now a paid department, the articles of incorporation of the Relief Association have never been amended, and you state Paragraph 2 thereof provides as follows:

"That the purposes for which this corporation is formed are: To provide for the relief of the sick, injured, disabled, and retired firemen of the Miles City Volunteer Fire Department; and the pensioning of the widows and orphans of deceased firemen of said Miles City Volunteer Fire Department, and provide for the general welfare and comfort of the members of said association."

The question is whether the existing articles of incorporation should be amended or a new Relief Association formed under the paid fire department.

Under Section 5129 of the Revised Codes of Montana of 1935, confirmed members of fire departments and of volunteer departments recognized by the city council may be members of a relief association. If Miles City has no volunteer department and its present relief association organization does not provide for payments to other than volunteers, it follows pensions cannot be properly made under the present system.

As a matter of fact, if the articles of incorporation of the Miles City Fire Department Relief Association provide only for membership for volunteer firemen, as is the case with respect to benefits, then it is possible the relief association has no members at all. In the case of *State ex rel. Casey v. Brewer*, 107 Mont. 550, 557, 88 Pac. (2nd) 49, the Montana Supreme Court held a member of a volunteer association abolished by the city government could no longer qualify as a member of the relief association. Accordingly, if the Miles City Volunteer Fire Department has been abolished, as your letter indicates, and the membership of the Relief Association is limited to members of said volunteer department, then there are now no members of the said Relief Association, if the present articles of incorporation do not also provide for paid firemen as members.

It is my opinion that, when and if a volunteer fire department is abolished and replaced by a paid department alone, the articles of incorporation should be amended to provide only for paid firemen as members and as recipients of benefits; or a new relief association should be created providing for membership, consisting of the members of the paid department, and for payment of benefits with respect to such members. If the existing Relief Association's membership consisted only of volunteers, it seems necessary to create a new corporation, since it may be at least doubtful whether the old Relief Association, organized under the volunteer department only, has any legal existence after the volunteer department has been abolished and replaced with a paid department.

Sincerely yours,

JOHN W. BONNER
Attorney General