

**Firemen—Pension—Retirement.**

Under Chapter 129, Session Laws of 1911, it is not necessary that a fireman should have been disabled before being entitled to a pension.

December 21st, 1918.

Mr. Ed. F. Land, Secretary,  
Butte Firemen's Union No. 96,  
Butte, Montana.

Dear Sir:

I am in receipt of your letter of recent date requesting that I give you an opinion regarding the construction to be given Chapter 129, Session Laws 1911, an act provided for the pensioning of firemen, etc.

As I am not authorized to officially advise state and county boards and officers you will appreciate the fact that any opinion I may give you cannot be considered as an official opinion in any respect, and therefore will be no more binding on any officer or board than the opinion of any other attorney.

I cannot agree with the opinion which you say City Attorney Geo. D. Toole rendered concerning the construction to be given to the provisions of this Act, as he has very evidently overlooked entirely the provisions of Sec. 8 of the Act.

This act contains three sections providing for the payment of pensions, Section 8, 9 and 10, each section providing for the payment of pensions to a different class or classes.

Section 8 provides for the payment of pensions to firemen who retire, 1. after reaching the age of fifty years, regardless of length of service, 2. who have been in active service for eighteen years, regardless of age, and 3. who have been members of a relief association for ten years, regardless of age or length of service. No mention is made whatever in this section of payment of pensions on retirement for disability.

Section 9 provides for the payment of pensions to firemen of an entirely separate and distinct class, viz., those who become disabled, regardless of age, length of service, or length of membership in the association. Under this section a fireman may be of the age of twenty-five years only, may have been in active service but one month and may have been a member of the association but one month, yet if he becomes disabled he is entitled to a pension.

Section 8 then provides for the payment of pensions to the classes therein enumerated, wholly and entirely regardless of disability, while Section 9 provides for the payment of pensions on account of disability wholly and entirely regardless of age, length of service, or length of membership in the association.

That these two sections are entirely independent of each other clearly appears from Section 11, which provides that the funds shall be disbursed "(2) For the payment of pensions pursuant to the provisions of Sections 8 and 9 of this Act." If it had not been intended that Sections 8 and 9 should provide for the payment of pensions to firemen of entirely different classes there would have been no necessity for using this particular language, as the provision found in subdivision (1) of Section 11 would have been sufficient.

I am therefore of the opinion that it is not necessary for a fireman, who falls within one of the classes specified in Section 8, to be disabled in order to entitle him to a pension, but all that is necessary is for him to (1) have attained the age of fifty years, (2) or have been a member in active service for eighteen years, or (3) have been a member of the relief association for ten years.

Respectfully,

S. C. FORD,

Attorney General.