

**Workmen's Compensation Act—Employers, Who Are,
For Assessment Purposes—Firemen.**

Firemen who are excluded from the benefits of the Firemen's Association, should be included in the city pay roll for assessment purposes under the Workmen's Compensation Act.

Sept. 23, 1919.

Hon. A. E. Spriggs, Chairman,
Industrial Addicent Board,
Helena, Montana.

Dear Sir:

In your letter to this office of August 29th you requested an opinion under the provisions of Section 4 (a) of the Workmen's Compensation Act, as amended by the 1919 Session, as to who are now included as employees to be reported for assessment purposes.

This Act was then construed without reference to the provisions of Chapter 129 of the 1911 Session Laws as amended by Chapter 66 of the 1919 Session Laws. You now call my attention to the latter Act and particularly to Sections 8 and 9, as amended by said Chapter 66.

In the former opinion it was held that eliminating public officers it now applied to every employee of a municipal corporation when a single employee was engaged in hazardous occupation.

In this state firemen are held not to be public officers and therefore would come within this general rule were it not for the provision of Section 9 of Chapter 66, which provides that the Firemen's Relief Association may pay out service pensions as designated by its by-laws under the provisions of this Act, not exceeding one-half of the monthly salary of the pensioner. Nothing herein contained shall be construed as permitting any member of a fire department relief association receiving benefits or allowances under the provisions of this Act and at the same time, for the same casualty, or allowance under the Workmen's Compensation Act. Under Section 8 of this Act a service pension may be paid (1) to each of its members who have heretofore or may hereafter retire, (2) or has reached or shall hereafter reach the age of fifty years, and who has done or shall do active duty for twenty years or more, or who, under the by-laws, may be entitled to a pension.

This Act provides that its funds shall be dispensed for only the following purposes:

(1) For use of sick, injured or disabled firemen of any fire department and their widows and orphans.

(2) For the payment of pensions as provided in Sections 8 and 9. Section 6 of the Act excludes from its benefits substitutes, probationers and any fireman not a member of the association, where the city has an association.

The Workmen's Compensation Act provides for compensation for accidental injury occurring in the course of employment, and in case of death payment is made to dependents.

The Disability Fund Act does not limit the benefits paid to injury or disability caused by or in the course of employment, but is much broader, and not only includes these but also includes sickness, and provides that widows and orphans of deceased firemen may receive a pension.

Section 9, before amendment, contained a provision limiting service pensions to members not entitled thereto under the provisions of Section 8, or such members as are permanently disabled, and upon the removal of disability, such pension should cease. This proviso was omitted on amendment and the effect would be to allow pensions to those disabled, whether permanently or partially. This section now provides that every Fireman's Relief Association * * * and every board of trustees may pay out of any funds heretofore or hereafter received, service pensions in such amounts and in such manner as its by-laws shall designate, under the provisions of this Act, not exceeding one-half the sum last received as a monthly salary. The pension provided for cases set out in Section 8 cannot be paid to any persons while he remains a member of the department nor while receiving other relief. This is not true as to the pension provided for in Section 9, which would allow a pension for disability or injury, and while recovering from the same. In the case of permanent partial or permanent total disability, a pension might be paid either under the provisions of Section 8 or Section 9. It is apparent, therefore, that the Disability Fund Act covers all cases that the Workmen's Compensation Act covers, as well as additional ones, and is more liberal in its benefits. In the case of public corporations, assessments under the Compensation Act come from public funds. This is also true of the Firemen's Disability Fund, as the injustice of allowing compensation under both acts was apparent; the manifest intent of the legislature by the amendment to Section 9 by the 1919 Session Laws was to eliminate these payments. But as it is unjust to require two premiums to be paid where compensation can be had from but one, it would seem that firemen belonging to an association should be eliminated from the payroll required to be furnished for assessment purposes. As probationers, substitutes and firemen not belonging to the association are excluded from the benefits of the disability fund, all such should be included in the city payroll to your office.

In this, as well as in the case of employes of municipal corporations, as distinguished from officers, all doubtful cases should be included in the payroll since the Act should be liberally construed to affect its manifest purpose and the same rule as who are assessable under the Act must be applied in determining who are entitled to benefits, otherwise, someone will derive benefits for which someone else has paid.

Respectfully,

S. C. FORD,

Attorney General.