

**Firemen's Relief Association—Memberships—By-laws —  
Workmen's Compensation.**

Compensation for the death of one who was a member of a firemen's relief association cannot be paid to the widow where the by-laws of the association provide for a pension to the widow.

J. Burke Clements, Esq.,  
Chairman, Industrial Accident Board,  
Helena, Montana.

August 27, 1927.

My dear Mr. Clements:

You have submitted to this office your files in the case of Gleason vs. the City of Butte, from which it appears that William M. Gleason was a regular fireman of the city of Butte and met with an accidental injury on June 9th, 1927, which resulted in his death, and that Mrs. Ruth Gleason, widow of the deceased, has filed a claim for compensation from the Industrial Accident Fund.

The city of Butte is a municipality under the provisions of the workmen's compensation act unless the compensation act should not be considered to apply to the case of a fireman who belongs to a relief association authorized by law and which provides by its by-laws for payment of disability and death benefits.

The by-laws of the fire department relief association of the city of Butte provide that in case of the death of an active member of the association there shall be paid to the widow so long as she remains unmarried, out of the fireman's disability fund a monthly pension of \$35.00 per month and further provide that in case of death of an active member of this association, and he shall have left in addition to his widow, a minor child or children, there shall be paid to the widow so long as she remains unmarried, out of the fireman's disability fund an additional sum of \$10.00 per month for each child or children under the age of 16 years, provided, however, that when a child reaches the age of 16 years, the payment of such additional sum of \$10.00 per month shall immediately cease and terminate.

Section 15 of chapter 58 of the session laws of 1927 amends section 5133 of the Revised Codes to read as follows:

“Every Fire Department Relief now or hereafter organized in this State which is now incorporated or which may hereinafter be incorporated may pay out of the disability and pension fund, service pensions in such amounts and in such manner as its by-laws shall designate, under the provisions of this Act, not exceeding, however, one-half of the sum last received as a monthly salary by such pensioned member monthly. Nothing contained herein 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, an allowance under the Montana Workman's Compensation Act. In case of volunteer or call men such pension shall not exceed the sum of Seventy Five Dollars (\$75.00) per month."

And section 16 of chapter 58 amends section 5134 to read as follows: "Such Fire Department Relief Association may pay to the widow and orphans of deceased firemen in such sums and under such limitations and conditions as its by-laws shall provide, and not contrary to the laws of this State, a pension not exceeding, however, a sum equal to one-half of the monthly salary last received by such deceased fireman, monthly to each pensioner or to any one family, with the right to increase or decrease the amount of such pension when on account of the amount of funds, or lack of funds on hand, or for other good cause, such reduction or increase seems to the association advisable or reasonable. In case of volunteer or call men the compensation shall be the same as paid firemen and not to exceed the sum of seventy-five dollars (\$75.00) per month."

It will be observed that under the provisions of section 15 it is not the policy of the law as announced by the legislature in this section to pay benefits both from the fireman's relief association and the industrial accident fund, and while this section seems to apply only to the member and prevents him from receiving relief from both the relief association and the workmen's compensation act, yet, it is my opinion that the legislature intended to also deprive both his widow and children from receiving benefits from both the relief association and the industrial accident fund by reason of death of the husband and father.

It is further my opinion that inasmuch as the legislature has provided for a relief organization in cities and towns where fire departments are maintained, that it was the intention of the legislature to exclude firemen who belong to such associations from the provisions of the workmen's compensation act.

It is therefore my opinion that Mrs. Ruth Gleason is not entitled to receive compensation for the death of her husband under the provisions of the workmen's compensation act inasmuch as it is apparent that she is entitled to a pension from the fire department relief association of the city of Butte during the time that she remains a widow.

Very truly yours,

L. A. FOOT,  
Attorney General.