

Fire Departments—Relief Associations—Moneys—Securities—Bonds.

The bond of a treasurer of a fire department relief association must be not less than the amount of all funds and securities belonging to the association. The treasurer is chargeable with the safe-keeping of the moneys and securities belonging to the association. He is not relieved from this responsibility nor from the duty to provide a bond covering the funds and securities where the trustees assume the custody of the funds and securities or any part thereof.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

February 19, 1932.

My dear Mr. Hawkins:

I have your request for an opinion. You state that a fire department relief association has in cash \$3,124.49 deposited in a bank and

\$104,870.47 invested in securities which are kept in a safety deposit box in the bank under control of the trustees and not the treasurer. The relief association claims that the treasurer is not required to give bond covering these securities and that he is required only to give bond in the amount of cash and securities in his hands which in this case would be only the moneys on deposit in the bank.

You inquire if the contention of the association is correct or whether under the law the treasurer of the relief association must also furnish a bond covering the securities above mentioned as well as the money on deposit.

The disability fund of the fire department of a city was, prior to 1927, handled in one of two ways. Section 5120, R.C.M. 1921, provides that it shall be administered by a board of trustees consisting of the mayor, clerk and attorney of the city or town, the chief of the fire department and one member of the fire department. Section 5122 provides that the fund shall be and remain in the city or town treasury until withdrawn by warrants drawn against it. Section 5121 provides that the city or town council may provide for the investment of all or any part of the funds in the securities therein mentioned and that the securities "shall be deemed part of the city treasury, and the treasurer shall be responsible therefor in the same manner as for the moneys of the fund."

It will thus be seen that where there is no relief association the securities, as well as the moneys are deemed a part of the city treasury and that the city treasurer is responsible for the securities as well as the moneys belonging to the fund.

A fire department relief association could, under section 5129, R.C.M. 1921, and subsequent sections, be formed by the members of the fire department of any incorporated city if a majority of the city council consented thereto. The association was to elect a president, a secretary and treasurer and such other officers as may be deemed necessary. When so formed all moneys in the hands of the city treasurer to the credit of the disability fund were required to be delivered over to the treasurer of the relief association, provided the treasurer of the association had given "to the association a good and sufficient bond for the faithful discharge of his duties according to law, the amount of such bond to be fixed by said association." The association and its board of trustees had full charge, management and control of the funds and they could invest them as provided by law.

It will be noted that the bond of the treasurer of the association was to be in such an amount as might be fixed by said association. It will also be noted that nothing was said about transferring any securities to the treasurer of the association which might previously have been procured by the investment of the fund when it was under the control of the board of trustees mentioned in section 5120, R.C.M. 1921, but I have no doubt that the duty to turn over all money to the credit of the disability fund carried with it the duty to transfer the securities in which this money might have been invested for the securities in which the moneys might have been previously invested were a part of the disability fund and represented moneys which had been paid into that fund for its bene-

fit. The securities represented the invested moneys belonging to the fund and I have no doubt the duty to turn over the moneys of the fund carried with it the duty to turn over the invested moneys as well as the moneys actually on hand.

In 1927 certain amendments were made to the laws relating to relief associations by chapter 58, laws of 1927. The duty to invest the funds of the association was still vested in the trustees. The treasurer of the association was required to give the association a good and sufficient bond "of not less than double the amount of all funds and securities in the hands of said treasurer" for the faithful discharge of his duties according to law. The amount of such bond was to be approved and paid for by the association. Upon giving such bond the city treasurer was required to turn over to the treasurer of the association all money in the hands of the city treasurer to the credit of the disability and pension fund.

It will be noted that the treasurer of the relief association was by this amendment specifically required to give a bond covering "all funds and securities" in his hands. It will also be noted that nothing was said specifically about turning over securities to him by the city treasurer but, as above stated, there is no doubt in my mind that this was required because they were a part of the disability fund and represented moneys belonging thereto.

In 1929 the legislature by chapter 137, laws of 1929, again changed the amount of the bond to be given by the treasurer of the association so that instead of being required to give a bond in double the amount of the funds and securities in his hands he is required to give to the association a good and sufficient bond of "not less than the amount of all funds and securities in the hands of the said treasurer for the faithful discharge of his duties according to law." The amount of such bond is to be approved and paid for by such association.

The law therefore at the present time is that the treasurer of the relief association is required to give a bond in such amount as may be approved by the association but it must not be less than the amount of all funds and securities in the hands of the treasurer. It is claimed that because the securities mentioned in your inquiry are in a deposit box which is under the control of the trustees rather than the treasurer that the securities are not in the hands of the treasurer of the association and therefore the bond given by the treasurer of the association is not required to be in such an amount as will include them.

While the law is vague as to the duties of the treasurer of the association with respect to the disability fund it does provide that the fund shall be paid to him and this included the delivery of any securities in which those funds might have been invested at the time of the formation of the relief association. The ordinary duty of a treasurer is to keep all of the funds of the body for which he acts until they are withdrawn in the manner provided by law. These securities which are deposited in a safety deposit box in the bank are without a doubt a part of the disability fund, and, in my opinion, they must be kept by the custodian of that fund who is the treasurer of the relief association. It would be extremely hard to reconcile with sound financial practice custom and usage a theory which would require only the cash of the association to be pro-

tected by a bond of the treasurer, whereas the securities representing invested cash could be held by the board of trustees without any bond at all or that securities in the hands of the treasurer of the association should be protected by a bond while those in the hands of the trustees need not be protected.

The very provision of the law which was amended to specifically provide that the treasurer should give a bond covering the securities in his hands, as well as the cash in his hands, indicates that the legislature intended that the treasurer of the association should be the custodian of both the cash and the securities. While the trustees have the right to manage the fund and to invest it, in my opinion, after it has been invested the securities obtained thereby must be delivered to the treasurer of the association to be kept by him together with all cash, as the two together constitute but a single fund for the custody of which an officer is provided by the law, namely, the treasurer of the association.

It is therefore my opinion that the treasurer of the relief association is chargeable with the safe keeping of the securities mentioned in your inquiry and that his bond must not be less than an amount which will include the moneys, as well as the securities mentioned in your letter.

Very truly yours,

L. A. FOOT,
Attorney General.