

Opinion No. 123.

Pensions—Volunteer Firemen—Benefits—Funeral Expenses—Suicides, Pension In Case of.

HELD: 1. Before a volunteer fireman may collect a service pension he must be retired, over fifty years of age, and must have done active duty for twenty years or more.

2. Where a fireman did not contract a sickness "in line of duty" he may not collect benefits therefor.

3. Funeral expenses of a member may be paid by the Fire Department Relief Association in all cases since there is no limitation in the statute.

4. The payment of pensions to widows or orphans is not limited to cases where death resulted from injuries or sickness obtained or contracted in line of duty.

June 19, 1935.

Hon. Frank H. Johnson
State Examiner
The Capitol

You have submitted the following questions:

"1. Can a volunteer fireman collect a service pension, and under what conditions?"

Section 5132, R. C. M. 1921, as amended by Section 14, Chapter 58, Laws of 1927, provides: "In case of volunteer or call men such pension shall not exceed the sum of Seventy-five Dollars per month." This is a part of the section dealing with service pensions. The conditions upon which a service pension may be received are stated in this section. To

receive such pension it is necessary that a volunteer fireman be retired; that he be over the age of fifty years and that he shall have done active duty for twenty years or more.

"2. Can a fireman, who contracts sickness not on duty, off shift, or on vacation, collect benefits?"

This question is general and does not state the facts from which we can determine whether the fireman in question contracted the sickness in line of duty. Each case, of course, must be considered on its own facts. Subdivision 4 of Section 6 of Chapter 58, Laws of 1927, amending Section 5123, R. C. M. 1921, expressly allows benefits "to a member who has contracted sickness in line of duty." Since your question assumes that the fireman did not contract the sickness in line of duty, my answer to your question must be in the negative.

In *Hutchens v. Covert* (Ind.) 78 N. E. 1061, is found a discussion on the phrase "line of duty." Among other things, it was said in that case:

"In fine, the phrase, 'line of duty', is an apt one to denote that an act of duty must have relation of causation, mediate or immediate, to the wound, the casualty, the injury, or the disease producing disability or death. * * * This means that he must have contracted the disease as a result of his service, or as a result or by reason of the fact that he was in the service. The service must have been the cause of the disease, not merely coincident in time * * *."

For other cases discussing the phrase, see *Rhodes v. U. S.*, 79 Fed. 740, 743, 25 C. C. A. 186; *Burian v. Los Angeles Cafe Co.*, 173 Cal. 625, 161 Pac. 4, 5; *Allen v. Burlington, etc., R. Co.*, 57 Iowa 623, 627, 11 N. W. 614; *Malone v. State L. Ins. Co.*, 202 Mo. A. 499, 213 S. W. 877, 880; *Elliott v. Omaha*, 108 Nebr. 478, 191 N. W. 653, 654.

"3. Can funeral expenses for natural death or causes other than in the line of duty be allowed a qualified member, both volunteer and regularly paid firemen?"

Subdivision 5 of Section 6, Chapter 58, Laws of 1927, amending Section 5123, R. C. M. 1921, provides for pay-

ment of "funeral expenses of a member" without any qualifying phrase as to cause of death or whether death resulted from causes in line of duty, as is found in subdivisions 2, 3 and 4 of this section. In the absence of such limitation, it is my opinion that the funeral expenses of a member may be paid by the Fire Department Relief Association in all cases.

"4. Can pensions be paid to a widow or orphans of a deceased member if the said member met death by destroying his own life?"

Here again, we find under subdivision 6 of said Section 6, the provision, "pensions to the widow, orphan or orphans of a deceased member" without any qualifying phrase such as "whose death resulted from injury or sickness obtained or contracted in line of duty." In the absence of such phrase, which is found in subdivisions 2, 3 and 4, we must conclude that the legislature did not intend to limit the payment to pensions to the widow or orphans to cases where death resulted from injuries or sickness obtained or contracted in line of duty.