

Opinion No. 321.

**Cities and Towns—Fire Departments
—Relief Associations—Funeral
Expenses.**

HELD: The payment of funeral expenses of members of a fire department relief association and the amount thereof, if any, is by law left to each association for determination.

July 7, 1936.

Hon. John J. Holmes
State Auditor and Ex-officio
Insurance Commissioner
The Capitol

You have referred to me the request of the Missoula Fire Department Relief Association submitting the following facts:

"Claude W. Harpster, having duly served the required time in this department as a fireman, was retired April 30th, 1932. He died June 28th, 1935, and his widow is at present drawing his pension as prescribed by law; on March 31st, 1936. she presented the local association with a bill amounting to two hundred and twenty-five dollars (\$225.00), for funeral expenses,"

and have asked whether or not that association could or must pay funeral expenses.

Section 5123, R. C. M. 1935, provides what benefits may be paid by fire department relief associations: "Every fire department relief association may allow to its members benefits for the following causes, as provided by law. * * *

"5. Funeral expenses of a member."

Section 5135, R. C. M. 1935, provides: "Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following: * * *

"5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of two hundred fifty dollars (\$250.00.)"

Section 4, Article VIII of the Fire Department Relief Association of the City of Missoula, as stated in the letter from it, provides: "Whenever an active member of the association in good standing, meets death from any cause as an active member of the Missoula Fire Department, an amount not to exceed however the sum of two hundred and fifty dollars (\$250.00) shall be paid to help defray the funeral expenses."

Section 5132, R. C. M. 1935, which provides for pensions to retired firemen, among other things, recites: "* * * No such pension shall be paid to any person while he remains a member of the fire department and any person receiving such pension shall not be entitled to other relief from such association."

Since we do not have a copy of the by-laws of the Fire Department Relief Association of the City of Missoula, we are unable to determine whether deceased was or was not an "active member of the association in good standing" at the time of his death. The statutes do not attempt to classify members of an association as active, retired or otherwise. Each association is permitted to adopt its own by-laws. It is apparent, however, that the deceased did not meet death from any cause as an "active member of the Missoula Fire Department," for, being a retired fireman, receiving a pension, he could not be a member of the fire department (Section 5132, *supra*); therefore, the status of the deceased at the time of his death was not such as would permit payment of any sum to help defray funeral expenses, as provided by the by-law of the association above quoted. The by-laws of the association would be controlling unless the payment of funeral expenses not to exceed \$250 is made compulsory by statute. We do not find anything in the statutes on which we can say positively that such payment is compulsory. On the other hand, the use of the word "may" in Sections 5123, 5132, 5133 and 5134, together with the provision that all applications and

claims for relief shall be referred to the board of directors of each association, with the right of claimant to appeal to the association in the event his claim is disallowed, indicate that the payment of funeral expenses and the amount thereof, if any, shall be left to each association for determination.

It is to be noted that there is a provision in Section 5132, above quoted, to the effect that retired pensioned firemen shall not be entitled to "other relief." It is not necessary to consider the effect of this provision and whether funeral expenses should be considered as "other relief" if the by-laws of the association do not permit payment of funeral expenses except to active members of the fire department.