

Opinion No. 123.**Municipal Corporations — Cities and Towns—Fire Department Relief Association, Right to Participate in by Former Firemen.**

HELD: Former part time and volunteer firemen are not barred by Chapter 200, Laws 1937, from participating in the fire department relief fund for injuries sustained prior to the passage of said chapter by which only full time firemen may be employed in cities of the second class.

July 27, 1937.

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown:

You have asked my opinion upon the question of whether former part time and volunteer firemen of cities of the second class, who, prior to the enactment of Chapter 200, Laws of 1937, were members of the fire department relief association by virtue of being members of an organized fire department, are barred from further participation in a fire department relief fund. The question is a general one as no particular facts are stated.

Chapter 200, Laws of 1937, providing for the minimum compensation of members of the fire department of cities of the second class, virtually did away with part time and volunteer firemen of cities of the second class. Section 5130, R. C. M. 1935, provides in part as follows:

“ * * * No one serving as a substitute or on probation, nor any person who has not been confirmed a member of an organized fire department is eligible for membership in the relief association. * * * ”

While we do not find that our Supreme Court has passed upon the specific question, the authorities are collected and the law is stated generally in 43 C. J. 818, Section 1422:

“If the right of an officer to share in a pension fund created by the state depends upon the happening of a particular event, his interest in the fund is a mere expectancy and liable to be defeated at any time before the happening of the event by the action of the legislature in repealing the law creating the pension, or making new and different provisions for the distribution of the fund. And the right of the legislature thus to revoke the pension is not affected by the fact that a given sum was retained from the officer each month, since such sum, although called in law a part of his compensation, is in fact an appropriation of that amount by the state each month to the creation of the fund. Where the event on which a pension to a police officer becomes payable actually has happened, the right to the pension is vested in the view of some courts, but other courts considering the pension for this purpose merely as a bounty hold that the state may recalled or withhold it at any time.”

Since no facts are stated, we are unable to pass upon any particular case. We think, however, that where a volunteer fireman, for example, was actually injured, or some event had occurred before Chapter 200, Laws of 1937, became effective, which would have allowed him to participate in the fund had not said Chapter 200 been passed, it would only be equitable and just that he be permitted to participate in such fund for such injury. On the other

hand, where the event has not occurred, e. g., death, or the age is reached at which a pension is paid, before the passage of the Act, we do not think there is such a vested right as would permit participation.