

Opinion No. 134.**Cities and Towns—Fire Department
Relief Associations—Amount
of Sick Benefits.**

HELD: The amount to be paid to a fireman as sick benefit must be determined by the By-laws of the Fire Department Relief Association.

August 9, 1937.

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

Dear Mr. Holmes:

You have submitted a letter from the Secretary of the Missoula Fire Department Relief Association and have asked for our opinion on the question requested by him. We are not sure that all the facts are presented in this letter. It is not exactly clear to us what the controversy is about but, if we understand it, the question is whether a fireman who contracts sickness in line of duty is entitled to full pay during the period of illness. According to the letter of the Secretary, the member to support his position cites Article VII, Section 1 of the By-laws of the Missoula Fire Department Relief Association which reads as follows:

“Article VII, Section I. Whenever any active member of the Association in good standing becomes incapacitated from performing his duties as an active fireman in the Missoula fire department by reason of sickness, he shall be paid from the Firemen’s dis-

ability fund such sum, not exceeding eighteen dollars (\$18) per week as the trustees may fix; such payment to be for a period of not less than seven days, nor more than fifteen (15) weeks, providing however, that such sick member may at the expiration of the period last named, be granted by the trustees, a temporary monthly pension, not exceeding one-half of the monthly salary received by such member, immediately prior to his becoming sick, until such time as such member may be able to resume his duties as an active fireman, or until such time as the matter of a permanent pension shall have been determined and fixed by the board of trustees."

It is evident that this section does not support his contention.

As we understand it the member further contends that, according to the decision of our Supreme Court in the State *ex rel. Barry against O'Leary et al.*, 83 Mont. 445, 272 Pac. 677, he is entitled to full pay. This case was based on Article VI, Section 1 of the Fire Department Relief Association of the City of Butte, which provided that: "whenever any member of the association in good standing becomes incapacitated from performing his duties as an active fireman by reason of sickness or accident he shall be paid from the Firemen's Disability Fund his regular monthly salary." (See Page 447 of the above cited case.) This case, therefore, went no further than to hold that the fireman was entitled to collect according to the articles of incorporation of the said association. The by-laws of the Missoula Fire Department Relief Association provides for an amount not exceeding \$18.00 per week as the trustees may fix.

Section 5123, R. C. M. 1935, does not fix the amount of the weekly benefit. Apparently it was the intention of the Legislature that the amount to be fixed should be determined by the trustees of the association in accordance with the By-laws. It is, therefore, my opinion that the fireman in question is limited to the amount fixed by the trustees according to Article VII, Section 1, of the By-laws of the said association.