

Opinion No. 159.**Cities and Towns, Second Class—Fire Relief Associations.**

HELD: 1. Full time paid firemen in cities of the second class are eligible to membership in fire relief associations, and are entitled to relief and pension as provided by the laws of the State of Montana, and the by-laws of the fire relief associations.

2. According to the provisions of Chapter 200, Laws of 1937, volunteer firemen would not be members of an organized fire department and therefore not eligible for membership in relief associations as provided by Section 5130, R. C. M. 1935.

3. Full time paid firemen in cities of the second class should elect new officers and trustees among their own number and take over the cash and investments belonging to fire relief associations.

September 20, 1937.

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown:

You have submitted the following:

“Your opinion is desired as to the legal status of members of incorporated Fire Relief Associations, and the legal status of the Fire Relief Association Funds, in cities of the second class.

“Upon examining the City of Kalispell Fire Relief Association, I found that the said Association membership consisted of paid firemen (being paid

in accordance with Chapter 200, Laws of 1937), and the volunteers who had functioned for many years along with the paid members.

"The City of Kalispell population is far in excess of 5000 and at the present time they have seven paid men.

"In view of the provisions of Chapter 200, Laws of 1937, and the above facts, your opinions on the following questions are desired:

"1. Are the regular full time paid firemen eligible to membership in the City of Kalispell Fire Relief Association and entitled to all the rights of relief and pensions as provided for by the laws of the State of Montana and the by-laws of the Fire Relief Association?"

"2. Are the other members of the Fire Relief Association, who are not regular paid firemen according to the provisions of Chapter 200 of 1937 Laws, but who were volunteer firemen, and who now serve the city on fires, at the rate of \$1.00 per hour, the payment being made to the Kalispell Volunteer Fire Department (not the Kalispell Fire Relief Association), eligible to continue as members of the Fire Relief Association, and also entitled to all the rights of relief and pensions provided by the laws of the State of Montana and the by-laws of the Fire Relief Association, where the death, or the age is reached at which a pension is paid, or injury, after the passage of Chapter 200, Laws of 1937.

"3. If the last above question is answered negatively, should the regular full time paid firemen elect new officers and trustees among their number according to law, and take over the entire amount of cash and investments that belong to the Fire Relief Association."

Section 5129, R. C. M. 1935, reads as follows:

"The confirmed members of the fire department or departments, together with the volunteer fire department or departments recognized by the city or town council in each incorporated city or town of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of

the city or town of.....
(naming the city or town) and when so formed, it shall incorporate under the laws of this state. In the event of the formation of such fire department relief association, there shall be elected by a majority vote of the members thereof, the following officers, to-wit: A president, a secretary, a treasurer, and three members to serve as members of the board of trustees, which said board of trustees shall consist of five members, of which the chief of the fire department, and the president of the fire department relief association shall be ex-officio members thereof. After the incorporation of any such fire department relief association, the said elective officers shall be elected annually on or before the fifteenth day of April of each year."

In view of the provisions of this section, your first question should be answered in the affirmative.

Since Chapter 200, Laws of 1937, does away with part-time of volunteer firemen in cities of the second class, and Section 5130 provides: " * * * 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 * * *" your second question should be answered in the negative. See also our opinion to you dated July 27, 1937, Volume 17, Opinions of the Attorney General, No. 123.

It follows, therefrom, and in view of Section 5129 quoted above, that the regular full time paid firemen should now elect officers and trustees from among their own members, and take over the cash and investments that belong to the Fire Relief Association.