

Opinion No. 73.

Fire Department—Minimum Wage
Paid Fire Department—What Are.

HELD: All members of paid fire departments in cities of Second class come under the provisions of Chapter 200, Laws, 1937, (House Bill No. 357) "Paid Fire Department," as used in Chapter 200, 1937, include those where some members are paid only for time spent in actual attendance at fires.

April 1, 1937.

Mr. Edward O'Byrne
Commissioner of Labor
Capitol Building
Helena, Montana

My dear Mr. O'Byrne:

I have your letter requesting opinion on HB-357, as it might pertain to the City of Kalispell where four firemen are employed on full time, a fire chief part time at smaller salary than stipulated in the bill, and several firemen designated as volunteer firemen who receive compensation at the rate of \$1.00 for each fire at which they attend. In addition to which compensation, they are furnished sleeping quarters by the city.

It is your desire to know whether or not the fire chief can work part time for less than the stipulated \$140.00 a month. Also, whether the volunteer firemen can work for less than \$140.00 a month, and whether sleeping accommodations for them might be considered as a part recompense.

You further inquire as to whether or not any of these men working more than eight hours of the twenty four, except in the case of a conflagration or other emergency, become

guilty of a violation of the statute in accepting less than the stipulated sum of \$140.00 per month, to all of which inquiries, we answer as follows:

Section 4, R. C. M., 1935, reads: **
The codes established the law of this state respecting the subjects to which they relate, and their provisions and all proceeding under them are to be liberally construed, with a view to effecting their objects, and to promote justice:"

The case of State v. Kahn, 56 Mont. 108, holds that a statute susceptible of various construction must be so construed that its validity is favored if such be possible.

State v. State Board of Equalization, 56 Mont. 413 holds that if there is any doubt as to the construction, it shall be resolved in favor of the validity of the statute, and again,

State v. Bowker, 63 Mont. 1, holds that every presumption shall be in favor of the legislative act.

In view of the foregoing citations, we must necessarily hold that HB-357 is a valid, subsisting law of the State of Montana, and such holding will continue until the matter is brought to the courts for court decision.

The question then arises, as to what is a paid fire department, since the bill refers to paid fire departments.

"Paid," is defined by Webster as "Receiving pay; compensated, hired; "To pay" is defined by Century and Standard Dictionaries,—"To deliver that which is, or is regarded as, the equivalent of compensation to, as to an employe or a creditor for service or goods, to give as pay; to remunerate, reward, as to pay workmen or servants."

Webster defines a volunteer as "A person who enters the service of his own free will." "A person who gives his services without express or implied promise of remuneration in return, is called a volunteer, and is entitled to no recompense whatever." Black Law Dictionary, page 1224.

In the case of Kalispell, as you represent in your letter, you will note that while volunteer firemen is mentioned as an expression, the fact is that they do not come within the prov-

ince of this definition. In other words, they are being paid, and as far as either "volunteer" or "paid firemen" in the strict sense of the word is used, we might say that neither are drafted, nor is their service compulsory, but all firemen, whether they are paid a stipulated salary or volunteer their services, do so of their own free will.

Corpus Juris, Vol. 43 Section 1445, page 824, gives us the following opinions:

"Where some of the members of a fire department are paid salaries, and the rest of the members are paid for time spent in actual attendance at fires, the department is a Paid Department." Continental Hose Co., No. 1 v. Fargo, 17 N. D. 5: 114 N. W. 834.

In view of the foregoing decision, and our code provisions as stated, it is our opinion that the City of Kalispell, if its population is more than 5,000, has a paid department as above provided, and comes within the provisions of HB-357 and must comply with the provisions of such bill or suffer the penalty as therein provided.

The bill makes no provision as to whether or not sleeping accommodations shall be considered a recompense or part recompense, nevertheless, it is only fair to say that in the ordinary practice, sleeping accommodations should be considered as a part recompense.