

## Opinion No. 183.

**Fire Department Relief Association—  
Funds—Secretary, Salary of—  
From What Fund Payable.**

HELD: A fire department relief association may provide for the payment of a salary to a secretary, but such salary may not be paid from the disability and pension fund.

December 28, 1939.

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

Dear Mr. Holmes:

The question submitted to this office is, in short, as follows:

Can the salary of the secretary of the fire department relief association be paid from the "disability and pension fund" of such fire department relief association?

By legislative act, Chapter 103, Laws of 1931 (Sec. 5135, R. C. M., 1935), the use of the disability and pension fund of the fire department relief association is particularized as follows:

"Said fund shall **not** be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. A pension to a member who has become maimed or disabled in line of duty.

3. A benefit or allowance to a member who has suffered injury in line of duty.

4. A benefit or allowance to a member who has contracted sickness in line of duty.

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).

6. Payment of a pension to the widow, orphan or orphans of a deceased member.

7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them incurred in the line of duty in such fire department.

8. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund."

It is apparent from the legislative act aforesaid that the question must be answered in the negative.

Under Section 5129, R. C. M., 1935, fire department relief associations are required to incorporate, and since they then become a corporation, means must be supplied for the functioning of such an institution; they elect officers; their treasurer is bonded; they operate by a set of codes or by-laws, which codes or by-laws make provisions for proper functioning of such a corporation. It is a non-profit corporation, and Section 6456, R. C. M., 1935, makes provision as to what matters may be embraced in such by-laws. Subsection 2 of the said section provides:

"The fees of admission and dues to be paid into their treasury by members."

Subsection 6 is as follows:

"Other regulations, not repugnant to the constitution or laws of the state and consonant with the objects of the corporation."

Since these are among the provisions of by-laws it is only fair to assume that provisions should be made by the by-laws for the payment of such salaries as may become necessary on the part of the corporation, and such payment should be made out of funds in the hands of the treasurer other than the disability and pension fund for this particular fund by legislative act is earmarked for a particular purpose.