

out of his salary dues for the Fire Relief Association.

May 6, 1939

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

Dear Mr. Holmes:

The questions submitted in your letter of April 16, 1939, are the following:

1. Suppose that a fireman, after being with the department and a member of a fire department relief association for several years, resigns or is discharged, can the association amend its by-laws so that the said member can be paid all the moneys that he has paid into the association's pension and disability fund, during his membership in said association?

2. The city in paying the members of the fire department makes out a warrant in the amount of the salary less deductions for membership and annual dues to the fire department relief association, making a separate warrant direct to the association for such dues. The question arises as to whether or not the fireman would have action against the city on the ground that he had not been paid his full salary.

My answer to both inquiries is "no," and based upon the following reasoning: Referring to Question 1, the State of Montana, in order to be of material assistance to the fire departments, passed an Act under Chapter 71, Laws of 1907, creating a "disability fund" for the benefit of firemen disabled in the line of duty. The Act made provision for the maintaining of such a fund by a levy of a special tax upon the assessed valuation of all taxable property within the limits of the city or town. The Act further provided that the said fund should not be used for any purpose whatsoever other than the relief of firemen of such city or town, who may be disabled in the line of duty, etc. The handling of the fund under the original Act was in the hands of the City Treasurer. In 1911 the Legislature, under Chapter 129, amended the said Act of 1907, by providing for the incorporation of a Fire Department Relief Association, the said association to be composed of active members of the fire department.

#### Opinion No. 60

##### Firemen—Relief Association— Funds.

HELD: The Fire Department Relief Association cannot amend its by-laws to provide disbursements for the pension and disability fund other than is specifically set out by the statute.

2. A member of the Fire Department Relief Association has no action against the City by reason of holding

- State ex rel. Casey v. Brewer, 107 Mont. 550, 88 Pac. (2) 49, 53.

The purpose of the amended Act was to place, and did place in the Fire Department Relief Association the full charge, management and control of the disability fund. The Act further specified the nature of the disbursements from such funds, limiting the disbursements to the use of the sick, injured or disabled firemen and their widows and orphans. It also provided that it is a charitable institution incorporated for the sole and only purpose of managing the disability fund. It is incorporated under Sections 5129-5137 and 6453-6458, R. C. M., 1935, Being a corporation, though non-profit, it naturally provides for by-laws, the purpose of which by-laws is to prescribe the qualifications of members, mode of election, terms of admission, method of procedure in the handling of the disability fund, fees for admission and dues, in the event the association feels that dues are necessary. The by-laws are provided for in Section 6456, R. C. M., 1935.

It is only natural to assume that the fees for membership and dues, if any, since it is a non-profit corporation, should only be sufficient to carry on the operation of the corporation and such membership fees and dues are not, and should not become a part of the disability fund for the purpose of paying the expenses of operation of the corporation.

Amendments have been made to Chapter 129 of the Laws of 1911, but as far as pertinent to the question, have no application except as to the sources from which the disability fund is made up. These sources are specified and are such as money derived from taxation, donations from any source, gifts and money received from the State of Montana. While the question imports that the membership and dues are paid into the association's pension and disability fund, such is hardly the case unless the association desires, or its members desire to make a gift to such fund, the general rule being that membership fees and dues, as stated above, are placed in a separate fund for a different purpose. In the event some associations do make a gift to the disability fund, they would then come under Section 6884:

"A gift, other than a gift in view of death, cannot be revoked by the giver."

A member of the Fire Department Relief Association is entitled to no refunds for anything that has been placed in the disability fund for the reason that the statute, Section 5135, R. C. M., 1935, provides:

"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."

In view of the above, it is my opinion that a member is not entitled to any refunds of any moneys that he may have paid into the association's pension and disability fund or into any other fund for the association, and that the by-laws of the association could not be so amended in contemplation of the law to provide for such reimbursements.

Answering the second question, this is largely a matter of accounting and such procedure as suggested, if adopted, must be with the consent of a majority of the association. No member of any fire department is compelled to become a member of the Fire Department Relief Association. If he then does become a member of the association, he does so of his own initiative and becomes bound by the procedure of the corporation. If he sits idly by and does not object, when he has a right to object, he is estopped from complaining.

“He who can and does not forbid that which is done in his behalf is deemed to have bidden it.” (Section 8748, R. C. M., 1935.)