

No. 292

FIREMEN'S RELIEF ASSOCIATION—
WIDOW'S PENSION—PENSION

Held: A widow of a deceased member of a fire department relief association, whose marriage to such fireman was not consummated after the fireman had elected to retire from active service and receive a service pension, or, who had qualified and was receiving a disability pension, is entitled to the widow's pension if the fireman was (1) an active member, or (2) prior to his death had elected to retire from the fire department and was receiving a service pension, or (3) at the time of his death was receiving a disability pension for a sickness or injury suffered in the line of duty. Such pension is payable only during the time the widow remains unmarried.

November 14, 1941.

Mr. John J. Holmes
State Auditor and Ex Officio
Commissioner of Insurance
State Capitol
Helena, Montana

Dear Mr. Holmes:

On November 1, 1941, you requested an opinion "relative to the right of a widow of a deceased fireman, who, prior to his decease, had suffered an injury in line of duty and was receiving a 'disability pension,' as provided by Section 2, Chapter 73, Laws of 1939, to receive a widow's pension as provided for by Section 3, Chapter 73, Laws of 1939."

Under the provisions of Section 5134, Revised Codes of Montana, 1935, prior to its amendment by Chapter 73, Laws of 1939, it was within the discretion of the relief association to pay the widow of a deceased member the pension therein provided. However, the Legislature in 1939 amended Section 5134, supra; and under the provisions of this amendment it is now mandatory upon the association to pay such pension. This amendment went further and specifically provided the conditions under which the widow of a deceased member shall be paid the pension, as well as the conditions under which she may not receive such pension.

The widow is entitled to the pension under the following conditions, so long as she remains unmarried:

1. Where the deceased at the time of his death was an active member of a fire department in the city or town in which the relief association was located.
2. Where the deceased, prior to his death, had elected to retire from the fire department and was receiving a service pension as provided for by the laws of the state relative to such service pension.
3. Where the deceased, prior to his death, had suffered a sickness or injury in line of duty and was receiving or was eligible to receive a disability pension.

The widow is not entitled to the pension under the following conditions:

1. Where the marriage was consummated after the fireman had elected to retire from active service and receive a service pension as provided for by Section 1, Chapter 73, Laws of 1939, or
2. Where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by Section 3, Chapter 73, Laws of 1939.

It is therefore my opinion a widow of a deceased fireman, whose marriage to such fireman was not consummated after the fireman had elected to retire from active service and receive a service pension, or had qualified

and was receiving a disability pension is entitled to the widows' pension, if such deceased at the time of his death (1) was an active member of the department, or (2) prior to his death had elected to retire from the fire department and was receiving a service pension, or (3) at the time of his death was receiving a disability pension for a sickness or injury suffered in line of duty. Such pension is payable only during the time the widow remains unmarried.

Therefore your question must be answered in the affirmative, as the facts come within the third condition mentioned above. This assumes, however, the two conditions stated above—under which the widow is not entitled to a pension—do not apply in the case you mention.

Sincerely yours,

JOHN W. BONNER
Attorney General