

No. 375

**FIRE DEPARTMENT RELIEF ASSOCIATION—
BURIAL EXPENSES**

Held: Where certificate of incorporation or by-laws of Fire Department Relief Association provide for burial expenses of deceased members, a widow is entitled as a matter of right to such expenses in the amount as provided, not exceeding \$250. In the absence of such provision, the membership may, by vote, allow such expenses in an amount not exceeding two hundred fifty dollars.

March 21, 1942.

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

Dear Mr. Holmes:

You have submitted to this office an inquiry of the Gate City Fire Department of Glendive, Montana, upon which you request an opinion.

The facts submitted in the inquiry are as follows:

"Our records show that on October 1, 1914, one Peter Erickson was admitted to membership in the Gate City Fire Department, this a Volunteer Department; on January 1, 1918, he was selected by the City Council as Fire Truck Driver and paid by the City for such services a monthly salary. On August, 1939, said Peter Erickson tendered his resignation as Fire Truck Driver to the City of Glendive, also presenting his resignation to the Gate City Fire Department, requesting to be relieved from active duty as fireman and to be placed on the retired list as eligible for a service pension due to illness; this request was acted upon in the usual manner and Peter Erickson was paid a service pension of \$15.00 per month the same as paid several other retired members. This was paid for three months, or in other words until his death."

The question is whether Mr. Erickson's widow is entitled to receive, from the Relief Association funds, payment for burial expenses in the sum of \$250.00. The Relief Association is under the impression payment of burial expenses may be made only in case of active members.

Section 5123, Revised Codes of Montana, 1935, provides in part:

"Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

- "1. A service pension to a member who, by reason of service, has become entitled to a service pension.
- "2. To a member who has become maimed or disabled for life in line of duty.
- "3. To a member who has suffered injury in line of duty.
- "4. To a member who has contracted sickness in line of duty.
- "5. Funeral expenses to a member.
- "6. Pensions to the widow, orphan or orphans of a deceased member."

Section 5132, Revised Codes of Montana, 1935, provides for payment of service pensions to members of the relief association who retire from active service. This section further provides, "No such pension shall be paid to any person while he remains a member of the fire department . . ."

Section 5129, Revised Codes of Montana, 1935, provides the relief association shall be comprised of "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. . . ."

It would appear—from a reading of these statutes—a fireman to be eligible to membership in the relief association must be either a confirmed member of a paid fire department, or a member of a volunteer fire department recognized by the city or town council. Membership in the relief association is not compulsory. It is voluntary on the part of the fireman. However, when an eligible fireman becomes a member of the association, he is then entitled to the benefits provided by statute and the by-laws of the association. Conversely, unless he is a member of the association; he is not entitled to the benefits.

Under the provisions of Section 5132, *supra*, to be entitled to the service pension therein provided, the fireman must be a member of the relief association, and must not be a member of the fire department. In other words, to receive the pension, he must retire as a member of the fire department, but he must remain a member of the association. It follows, therefore, as a member of the relief association at the time of his death, his widow would be entitled to funeral expenses.

Section 5135, Revised Codes of Montana, 1935, provides the purposes for which the disability and pension fund of the relief association may be used. Among other purposes, it provides:

- "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)."

The statute does not provide for a specific sum to be paid as funeral expenses. Nor does it make the payment thereof mandatory. It does, however, limit the amount. Payment of funeral expenses and the amount, within the statutory limit, are, therefore, within the discretion of the association, either by provision thereof in the certificate of incorporation or by-laws, or by vote of the membership.

It appears from the facts given Mr. Erickson, at the time of his death, was receiving a service pension as a retired member of the fire department. He, therefore, must have been a member of the fire department relief association at the time of his death.

It is therefore my opinion that, if the certificate of incorporation or by-laws of the Gate City Fire Department Relief Association provide for payment of funeral expenses of a deceased member of the association, the widow is entitled as a matter of right to such payment in the manner and amount as provided, or in the absence of such provision, the membership of the association may by vote allow such payment.

Sincerely yours,

JOHN W. BONNER
Attorney General