

No. 83

FIREMEN'S RELIEF ASSOCIATION—
WIDOWS' PENSIONS

Held: A widow of a deceased fireman, under the provisions of Section 5134, Revised Codes of Montana, 1935, as amended by Chapter 73, Laws of 1939, is entitled to a pension as provided therein, if she meets the qualifications as therein provided, regardless of the date of the death of such fireman.

April 16, 1941.

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

Dear Mr. Holmes:

You have requested my opinion as to whether a widow of a deceased member of a regularly organized fire department is entitled to a widow's pension under the following facts:

The fireman, at the time of his death in October, 1934, was receiving a service pension paid by the Fire Department Relief Association out of the Firemen's Pension and Disability Fund of the city of his residence in the sum of eighty dollars per month, which was one-half of the amount last received by him as wages; deceased and his widow had been married for many years prior to the time he received his pension, and since his death the widow has not remarried.

In 1934, at the time of the death of the fireman, Section 5134, Revised Codes of Montana, 1935, was in force and effect. That section provides:

"Such fire department relief association **may** pay to the widow . . . such sums and under such limitations and conditions as its by-laws shall provide . . . a pension not exceeding however, a sum equal to one-half of the monthly salary last received by such deceased fireman . . . with the right to increase or decrease the amount . . ."

This section was amended in 1939 to contain the following language:

"Each and every fire department relief association, organized and existing under the laws of this State, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed or had elected to retire from active service of said fire department and receive a 'service pension,' as provided by Section 1 of this Act . . ."

It will be noted that under Section 5134, before amendment, payment of the pension to the widow was discretionary, as the Legislature used the word "may," while under the amendment the word "shall" is used; and it is thereby made mandatory. It may further be noted that payment was subject to limitations and regulations of the by-laws, while under the

amendment no reference is made to the by-laws. It is also noteworthy the amendment provides the association "shall pay to the widow . . . of a deceased member . . . who, on the date of his decease . . . had elected to retire from active service . . . and receive a service pension . . ."

Had the Legislature intended that the amendment apply only to widows of members who died after the effective date of the Act, it could well have so provided. However, on the contrary, we think the language used clearly intends that every widow meeting the conditions therein outlined is entitled to receive the pension provided, regardless of when application is made therefor.

Under the facts given, it appears the widow in question meets the qualifications provided by the amendment and is entitled to a pension in the amount as provided.

Sincerely yours,

JOHN W. BONNER,
Attorney General