

Dear Mr. Holmes:

You have asked if a former employee of the fire department of Livingston, Montana, who has terminated his employment with the fire department, may be refunded the three per cent of his salary which was paid into the Livingston Fire Department Relief Association Fund under the provisions of Section 1 of Chapter 43 of the Laws of 1939.

Section 5118 of the Revised Codes of Montana, 1935, as amended by Chapter 43, Laws of 1939, provides:

"The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part paid member of said fire department relief association amounting to three (3) per cent of his regular monthly salary, the proceeds of a tax levy as provided by Section 5119 of this act, and all monies received from the State of Montana as provided for by Section 5127, and the interest of any portion of said fund." (Emphasis mine.)

My search of the law of Montana relative to Fire Department Relief Associations fails to disclose any other statutory mention of monthly fee paid in by each member in the amount of three per cent of his salary. Our legislature has not provided for a refund of the three per cent or any part of it in the event of termination of a member's employment. For me to say it can be refunded, either in whole or in part, would be a usurpation of the legislative authority. It appears the legislative intention was that the three per cent be considered as a premium in the nature of an insurance premium to cover the risk involved on each member of a Fire Department Relief Association.

Our legislature enacted this legislation and it would therefore require another legislative act to change the same.

It is therefore my opinion a Fire Department Relief Association cannot legally refund the three per cent de-

Opinion No. 168

Fire Department Relief Associations—
Cities and Towns.

Held: A Fire Department Relief Association cannot legally refund pay roll deductions to a member whose employment with the fire department is terminate before any application is made for any of the benefits payable from the fund.

June 14, 1946.

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

Attention: Mr. John C. Sheehy
Deputy Investment
Commissioner

ductions to a member whose employment with the fire department is terminated before any application is made for any of the benefits payable from the fund.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General