

Opinion No. 139**Cities and Towns—Fire Department Relief Association—Construction of Act With Relation to Payment of Benefit For Incapacity From Sickness or Accident, in Connection with Provisions For Use of Disability and Pension Fund of Fire Department Relief Association.**

Held: That the two sections of the by-laws of a Fire Department Relief Association, which sections are hereinafter set forth in this opinion do not conflict with provisions of Sections 11-1926, 11-1928, Revised Codes of Montana, 1947, when construed in connection with 11-1915, Revised Codes of Montana, 1947.

December 9th, 1950.

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

Dear Mr. Holmes:

You have asked me a question which is substantially this: Do the two sections of the By-Laws of a Fire Department Relief Association (which sections are hereinafter set forth in this opinion) contravene the provisions of Sections 11-1926, 11-1928, Revised Codes of Montana, 1947?

The two sections of the By-Laws in question read as follows:

"1. Whenever any active member of the association who is a confirmed paid fireman of said City of _____, Montana, becomes incapacitated from performing his duties as an active fireman in the _____ City Fire Department by reason of sickness or accident, suffered or contracted in line of duty, he shall be paid from the Firemen's Disability and Pension Fund his regular salary.

Provided, however, that no claim for time lost arising through the indulgence of intoxicants shall be allowed.

2. The benefits paid to any member of the association who may be disabled in the line of duty shall be at least, but not more than, the sum equal in the amount to the loss of salary incurred less the amount paid by the City to such member on account of such disability.

Provided, however, that such sick or disabled member shall, at the expiration of the period of six (6) months, and prior to the resumption of his duties as an active fireman, submit to physical examination by a physician designated by the Board of Trustees, and if by such examination he is declared to be physically unable to resume his duties as an active fireman, then such member shall be granted by the Board of Trustees, a monthly pension, not to exceed one-half of the monthly salary received by such member immediately prior to his becoming sick or disabled and until such time as such member shall be physically qualified, and able to resume the duties of an active fireman, or until such time as a matter of permanent pension shall have been determined and fixed by the Board of Trustees."

As you pointed out in your letter of inquiry, Section 11-1926, Revised Codes of Montana, 1947, provides for disability pensions to be paid to members of a fire department relief association. The basis of the pension in general is that the individual shall receive an amount not to exceed one-half of the last monthly salary received by the disabled fireman.

Section 11-1928, Revised Codes of Montana, 1947, reads:

"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." (Emphasis supplied.)

Your question, as I understand it, comes to this:

Do Sections 11-1926, Revised Codes of Montana, limiting disability pensions to one-half (½) of the last monthly salary received by the disabled fireman, and Section 11-1928, Revised Codes of Montana, 1947, limiting the use of funds to the purposes enumerated in this section, prohibit the payment of regular salaries from the Fireman's Disability and Pension Fund to eligible members who are incapacitated by reason of sickness or accident, as provided for in the said By-Laws?

In order to answer this question I must point out Section 11-1915 Revised Codes of Montana, 1947. This code section was not included in your question, but must be read in connection with those sections you did mention. This section says:

"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 of a member.
6. Pensions to the widow, orphan or orphans of a deceased member.

All applications for relief shall be referred to the Board of trustees. All claims shall be referred to the Board of Trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event his claim be disallowed. 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 of the association shall pay the same out of the said pension and disability fund." (Emphasis supplied.)

Upon studying the three code sections in question, I think the following can be said: Section 11-1915, Revised Codes of Montana, 1947, provides **benefits** for members who have suffered injury, or have contracted sickness, in line of duty. This is what I believe is contemplated in sub-Section 1 of Article VI of the By-Laws in question. Section 11-1926, Revised Codes of Montana, allows a "disability" **pension** . . . Section 11-1928,, Revised Codes of Montana, 1947, limiting the use of

disability and pension fund of fire department relief association, allows both **pensions** to members who have become maimed or disabled in line of duty, and **benefits** or **allowances** to members who have suffered injury or have contracted sickness in line of duty. In short, the code sections mentioned in this opinion provide for both (1) pensions and (2) benefits and allowances.

I invite your attention to State ex rel. Barry v. O'Leary, et al., 83 Mont. 445, 272 Pac. 677, decided by the Montana Supreme Court in 1928. In that case nearly the same question was before the court. I realize that at the time the code section which is now 11-1926, Revised Codes of Montana, 1947, provided for a service pension, rather than a disability pension as it does now. Nevertheless, I feel that the court in holding that the relator was entitled to receive his regular monthly salary while incapacitated from illness contracted in line of duty (as provided by by-laws) saw the deciding facts to be that the code sections in question contemplated both benefits and pensions.

The court said:

"These sections . . . demonstrate clearly enough that a service **pension** granted to a member, who by reason of service has become entitled thereto is one thing, and a **benefit** or **allowance** to a member who has contracted sickness in the line of duty is quite another thing." (Emphasis supplied.)

Therefore, it is my opinion:

(1) That sub-Section 1 of Article VI of the By-Laws in question providing for payment of regular salary is a **benefit** allowed by Section 11-1915, Revised Codes of Montana, 1947.

(2) That sub-section 2 of Article VI of the By-Laws in question providing for a disability pension follows Section 11-1926, Revised Codes of Montana, 1947.

(3) That the disability **pension** is limited to one-half ($\frac{1}{2}$) the monthly salary of the fireman, but that the benefit provided for in sub-Section 1 of Article VI of the By-Laws is not limited by law.

(4) That Section 11-1928, Revised Codes of Montana, 1947, limiting the use of disability and pension funds of fire department relief associations allows both pensions and benefits. Thus, the By-Laws providing a regular salary benefit for an interim period prior to returning to duty or starting to receive a disability pension do not contravene the Sections 11-1926, nor 11-1928, Revised Codes of Montana, 1947, when construed in connection with 11-1915, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.