

Opinion No. 46.

**Firemen—Fire Department—Fire Department Relief Associations—
Membership—By-Laws.**

HELD: That a confirmed reinstated member of the great Falls Fire Department whose name has been placed on the roll call of the Great Falls Fire Department Relief Association, whose payroll deduction contributions have been accepted by said Association, and whose attendance at relief association

meetings as a member has prior to this date been accepted without question, may not now be considered a non-member by reason of his failure and the failure of the Association to strictly comply with regulations requiring the taking of a physical examination by a member, as set out in the Association's By-Laws.

October 14, 1953.

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

Dear Mr. Holmes:

You have requested my opinion as to the rights of a member of the Great Falls Fire Department in the Great Falls Fire Department Relief Association. You inform me that the individual became a fireman with the Fire Department in October of 1937, became a member of the Great Falls Fire Department Relief Association, and remained a member in good standing until July of 1949 at which time he left the Great Falls Fire Department to accept other employment. You further inform me that in April of 1952, the individual was re-employed by the Great Falls Fire Department in the capacity of a reinstated fireman. Following his confirmation as a fireman, the individual's name was placed on the roll call book of the Fire Department Relief Association. He attended three meetings of said Association, and had his wages subjected to a three per cent deduction, such deduction being the amount designated by law as the required contribution of members of the Relief Association. (Section 11-1911, R.C.M., 1947.)

The question briefly stated is whether the reinstated fireman may now be considered a non-member of the Association by reason of his failure and the failure of the Association to comply with certain of the Association's By-Laws pertaining to procedural steps to be taken with regard to the taking of a physical examination.

Authority for confirmed members of fire departments to form themselves into local relief associations is found in Section 11-1922, R.C.M., 1947, which provides:

"Fire Department Relief Association. 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 of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of the city or town of.....(naming the city or town,) and when so formed, it shall incorporate under the laws of this state. In the event of the formation of such fire department relief association, there shall be elected by a majority vote of the members thereof, the following officers, to-wit: A president, a secretary, a treasurer, and three members to serve as members of the board of trustees, which said board of trustees shall consist of five members, of which the chief of the fire department, and the president of the fire department relief association shall be ex-officio members thereof. After the incorporation of any such fire department relief association, the said elective officers shall be elected annually on or before the fifteenth day of April of each year."

Sections 11-1915, 11-1925, 11-1926, 11-1927 and 11-1928, R.C.M., 1947, set up the machinery for the disposition of the association funds for pensions of various sorts and disability payments as specifically set out. In the case of State ex rel. Casey vs. Brewer, 107 Mont. 550, 88 Pac. (2d) 49, the court, after carefully considering the above enumerated sections, stated:

"... the expressed intent and spirit of the law is to benefit the members of organized fire departments, whether that membership be a paid one or merely volunteer. It apparently may be either or both (Sections 5129, 5117, Rev. Codes)."

The court then cited that part of Section 11-1923, which provides that, "No one serving as a substitute or on probation, nor any person who has not

been confirmed a member of an organized fire department is eligible for membership in the relief association," and then went on to state:

"From this language it is clear that to participate in the affairs and enjoy the benefits of the relief association, a person would have to be a confirmed member of an organized fire department, or at least a member of a volunteer department recognized by the city or town council. . ."

It is established law that associations may prescribe rules of conduct for themselves. This is generally accomplished by the adoption of a constitution and by-laws. (4 Am. Jur., p. 462, Sec. 13, Membership Rights and Liabilities Generally). A study of the By-Laws of the Fire Department Relief Association of the City of Great Falls, as submitted by your office in relation to the known facts of the problem at hand, reveals that the By-Laws were not followed in two instances. In the first instance, Article I, Section 6, with reference to the President's duties requires in part that:

"He shall appoint a committee of two members in good standing to accompany each member of the Great Falls Fire Department when taking the doctor's examination prior to making application for membership in this Association and file a report with the Association on said examination before any action shall be taken on the said application."

In the second instance, neither Section 1 nor 2, Article III of the By-Laws was compiled with. Said sections read:

"Section 1. A confirmed paid member of the Great Falls Fire Department wishing to become a member of this Association, shall, first be examined by the regular Association Physician, after which he shall fill out (completely) the regulation application form, signed by two members in good standing in the Association and present the same with Physician's physical examination at a regular meeting of the Association for action thereon.

"Section 2. A committee of two active members in good standing in the Association shall be appointed to accompany each confirmed paid member of the Great Falls Fire Department when taking the doctor's examination prior to making application for membership in this Association and file a report with the Association before any action is taken on the said application."

The by-laws of a fire department relief association may properly designate the qualifications for membership in so far as they are not contrary to law. (Williams vs. Wilkes-Barre Firemen's R. & P. Ass'n., 64 Pa. Dist. & Co. 351.) However, it has been held that by-laws of a firemen's relief association should be construed most strongly against the association and in favor of those claiming benefits. (Vernon vs. Fireman's Pension Fund of Philadelphia, 160 Pa. Super. 617.) Furthermore, an association may be estopped to deny that one is a member therein, notwithstanding failure to comply with conditions of membership. (4 Am. Jur., p. 462, Sec. 12, Conditions to Membership.) It was held in the case of Tyrrell vs. Washburn (Mass.), 6 Allen 466, that membership in an association by one who had paid his contribution to the capital and had been admitted to a community of interest with the other members of the association could not be defeated by the failure of the person to sign the constitution of the association, as required by its terms.

It is uncontroverted that the individual concerned was a confirmed member of the Great Falls Fire Department, had attended meetings of the relief association, had paid his dues in the association, and had his name placed on the roll call of the Association. It is evident that he had been accepted as a member of the Association despite the failure to comply with the strict letter of the by-law requirements. Such being the case, it follows that the individual fireman may not, having been accepted as a member, be now denied such membership together with its attendant obligations and benefits.

It is therefore my opinion that a confirmed reinstated member of the Great Falls Fire Department whose

name has been placed on the roll call of the Great Falls Fire Department Relief Association, whose payroll deduction contributions have been accepted by said Association, and whose attendance at relief association meetings as a member has prior to this date been accepted without question, may not now be considered a non-member by reason of his failure and the failure of the Association to strictly comply with regulations requiring the taking of a physical examination by a member, as set out in the Association's By-Laws.