

time of his decease, the member was an active member of the Gate City Fire Department.

The questions posed are two, namely:

- (1) May a pension be awarded?
- (2) To whom should the pension be paid?

Section 11-1927, R.C.M., 1947, sets up three conditions under which a pension shall be granted to the widows or orphans of deceased members of a Fire Department Relief Association. That section provides as follows:

"Pensions to Widows and Orphans. 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 for by section 11-1925, or, prior to his decease had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a "disability pension," as provided by

Section 11-1926, out of any money in the relief association's "disability and pension fund," a monthly pension in amount which shall be equal to one-half of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided, such association may at any time, by a two-thirds vote of the members thereof, increase or decrease the said pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said pension in an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by the deceased member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half

Opinion No. 49.

Firemen—Fire Department Relief Associations—Pensions, Eligibility for.

HELD: (1) A pension must be awarded to the eligible widow or children of any deceased Fire Department Relief Association member who dies while an active member of the fire department.

(2) Fire Department Relief Association pensions must be paid to the widow of the deceased member or in the event that there is no widow or the widow is not eligible to receive the pension, then it must be paid to the children of the decedent.

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November 19, 1953.

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

Dear Mr. Holmes:

You have requested my opinion based on the following set of facts forwarded you by the Gate City Fire Department of Glendive, Montana.

One of the members of the Fire Department died on August 16, 1953, following fourteen years of service with said department. The member leaves a widow and minor son, the issue of a former marriage. At the

(½) of one (1) per cent of the taxable valuation of all taxable property within the limits of the city, town, or municipality. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this Act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and receive a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month." (Emphasis supplied.)

The use of the word "or" as underscored above is used in the disjunctive, indicating, without question that three separate and distinct conditions might exist, each in its own right entitling a proper beneficiary to a pension. State ex rel. Goings vs. City of Great Falls, 112 Mont. 51, 112 Pac. (2d) 1071. The statute is clear in stating that a pension shall be granted when a deceased fireman, at the time of his death, was an active member of a fire department. There are no conditions attached nor may any conditions be implied to the cause of death. Since in the instant case, the member in question was at the time of his death an active member, it follows that a pension must be awarded.

Your second question concerns the proper meaning to be given the provision that the relief association "shall pay to the widow or orphans" of a deceased fireman. Such language creates a contingent beneficence in the children of the deceased. It will be noted that Section 11-1927, supra, provides that the pension "shall be paid to the within named widow . . ." A search of authorities has not unveiled similar language in a pension statute which has been

interpreted. The majority of jurisdictions provide, in their firemen's pension statutes, succession provisions similar to those found in Montana's Metropolitan Police Law, namely, that upon the death of decedent's widow, or the happening of an event causing his widow's ineligibility to the pension, then same to go to the surviving child or children of the decedent. The Fire Department Relief Association's purposes are designed not only for the protection of the fireman himself but for the fireman's family. The broad policy of the law would indicate that this purpose is best served by recognizing the widow of the deceased fireman as the new family head and a proper first party to receive the pension as provided for by law.

The language of the statutes permits no discretion in the Board of Trustees as to whether to pay the widow or the children of the deceased. Such an interpretation could result in a defeat of the humane and public purpose of the pension Act.

It is, therefore, my opinion that:

(1) A pension must be awarded to the eligible widow or children of any deceased Fire Department Relief Association member who dies while an active member of the fire department.

(2) Fire Department Relief Association pensions must be paid to the widow of the deceased member or in the event that there is no widow, or the widow is not eligible to receive the pension, then it must be paid to the children of the decedent.