

Opinion No. 71.

Fireman—Fire Department Relief Association — Benefits — Duty of Firemen—In Line of Duty.

HELD: A paid city fireman member of a Fire Department Relief Association is entitled to payment from the association for sickness or injuries incurred in line of duty while answering a rural fire call.

"In line of duty" means doing the work of his employment in following the orders of his superior officers.

April 28, 1954.

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

Dear Mr. Holmes:

You have submitted to this office a file of correspondence between your office and the Fire Department Relief Association of Livingston, Montana, requesting that an official opinion be issued on the subject matter contained therein. The basic question involved may be stated thus:

"May a paid city fireman injured while answering a rural fire call, draw disability payments from the Fire Department Relief Association?"

The purpose of the statutes providing for fire department relief associations is to benefit the fireman and his dependents. A fireman member to be eligible for sickness or injury benefits must have incurred his sickness in line of duty. Section 11-1926, R. C. M., 1947, reads as follows:

"Disability Pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a 'disability pension,' out of any moneys in the association's 'disability and pension fund,' to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount

which shall be equal to one-half ($\frac{1}{2}$) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said 'disability pension' whenever the financial condition of the association's 'disability and pension fund' shall warrant such action; provided, further, that no member of said association shall be entitled to receive said 'disability pension' so long as he may be receiving an allowance or award under the Montana Workmen's Compensation Act; provided, further, that no increase shall be effected as will increase the said 'disability pension' to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly salary last received by the member; provided, further, that no decrease shall be effected unless the balance in the 'disability and pension fund' is less than one-half ($\frac{1}{2}$) of one (1) per cent of the taxable valuation of all taxable property within the limits of the city, town, or municipality. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month." (Emphasis supplied.)

It is well established that pension statutes should be liberally construed in favor of the intended beneficiary. *Klench v. Board of Pension Fund Commissioners*, 79 Cal. App. 171, 249 Pac. 46; *Hurley v. Sykes, et al.*, 69 Cal. App. 310, 231 Pac. 748; *State v. Riley (Del.)* 62 A. (2d) 236. The duties of a fireman are to follow the instructions of his superior officers in the performance of some of the actual physical work in the fighting of fires and in the work incident to that occupation. *Mason v. City of Los Angeles* (1933, Cal. 20 Pac. (2d) 84.) A fireman answering a call in a neighboring city at the order of his superior has been considered as acting in "line of duty." *Young v. Town of Kortright* (1935) (N. Y.) 278 N. Y. S. 180.

The only restriction in the pension statutes is that the injured or disabled fireman must have suffered his disability in line of duty. Insofar as an individual fireman is concerned, his duties are to follow the instructions of his superiors in carrying out the "work of his employment." *Meager v. Bishop*, 56 Ind. App. 455, 103 N. E. 492. In other words, whenever a fireman is engaged in the work that fire departments are generally called upon to do, he is acting in line of duty.

It is not incumbent on the fireman prior to answering a call to make an independent determination of facts ulterior to his principal job purposes, i.e., the fighting of fires. As was stated in the case of *State v. Riley*, supra:

"Members of a police or fire department are often required to perform duties which place them in great danger and every encouragement should be given them to faithfully discharge the duties which are assigned to them."

It is, therefore, my opinion that a paid city fireman member of a Fire Department Relief Association is entitled to payment from the association for sickness or injuries incurred in line of duty while answering a rural fire call.