

**Opinion No. 21****Fire Department Relief Association  
—Benefit—Discretionary Powers  
of the Membership By-Laws.**

HELD: That payment of a benefit to an eligible injured member of a Fire Relief Association in an amount equal to one-half ( $\frac{1}{2}$ ) his monthly salary, as awarded by the members of the Association, does not contravene state law or the by-laws of the association.

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June 27, 1955.

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

Dear Mr. Holmes:

You have requested my opinion on the following statement of facts:

A member of a Fire Relief Association injured his knee and went to the hospital on October 10th, 1954. He turned his doctor and hospital bill into the Industrial Accident Board and filed a claim with the association for loss of wages. His regular monthly salary is \$340.50 and as he did not receive any salary from the 15th day of November to the first day of December (fifteen days) he filed his claim for \$170.25.

The claim was signed by three members of the board of trustees, presented at a regular meeting at which there was a quorum, discussed and voted on with no dissenting vote. This action was taken on the assumption that the association may pay an amount equal to his regular monthly salary.

After the meeting the secretary made out a warrant and the treasurer made out a check. The president was not at the meeting and refused to sign the warrant and check because in his opinion the amount was in violation of state

law and the by-laws of the association.

Your question which is predicated on the above statement of facts is herein set forth:

Does the payment to an eligible injured member of the Fire Relief Association in the amount awarded by the association, which amount equals one-half ( $\frac{1}{2}$ ) his monthly salary, contravene state law or the by-laws of the association?

Section 11-1915, R.C.M., 1947, reads in part as follows:

“Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

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(3) To a member who has suffered injury in line of duty.

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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.”

A similar question arose in the case of State ex rel. Barry vs. O’Leary, 83 Mont. 445, 272 Pac. 677, wherein the membership of the Relief Association, under what is now Section 11-1915, R.C.M., 1947, awarded a city foreman benefits from the foremen’s disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. The secretary and president of the Relief Association refused to sign and countersign a warrant for the amount awarded by the associa-

tion, contending that such a benefit was in contravention of state law and the by-laws of the association.

The court in the O'Leary case, *supra*, distinguished the use of the words "benefits" and "pensions" in holding that the membership could grant a benefit to the fireman for his time lost under a discretion reposed in the membership by Section 5123, R.C.M., 1921.

In referring to Section 5123, R.C.M., 1921, which is now Section 11-1915, R.C.M., 1947, the court stated:

" . . . in any event the membership could vote as a benefit to the relator full salary for his time lost under the discretion reposed in the membership by that section. The membership having declared the claimant entitled to the amount of his claim it became the duty of the president and secretary to comply with the will of the membership."

The instant case is practically on all fours with the O'Leary case, *supra*, the difference being trivial—one member being incapacitated by reason of sickness and the other by reason of an injury. Regardless, the rationale of the court is applicable and the fireman is entitled to the benefits awarded by the membership of the Relief Association.

Section 4, Article VI of the by-laws of the Relief Association provides that, in the event a member of the association, in good standing, is injured in line of duty he shall be paid benefits for the time he is off duty and unable to discharge his duties as an active member of the fire department by reason of such injury an amount not to exceed one-half of his regular monthly salary received by such member prior to his injury.

In the instant case the claimant's monthly salary amounted to three hundred and forty dollars and fifty cents (\$340.50). The association at a regular meeting awarded the claimant without dissent, one-half his monthly salary or one hundred seventy dollars and twenty-five

cents (\$170.25). Such action by the association was an exercise of the discretionary powers reposed in the organization, and the award granted was not in conflict with either state law or Section 4, Article VI of the by-laws of the association, but to the contrary, in compliance and pursuant thereto.

It is therefore my opinion that the payment of a benefit to an eligible injured member of a Fire Relief Association in an amount equal to one-half ( $\frac{1}{2}$ ) his monthly salary, as awarded by the members of the Association, does not contravene state law or the by-laws of the Association.

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