

Opinion No. 41

FIRE DEPARTMENT RELIEF ASSOCIATION; pension, right of widow to—PENSIONS; fire department relief association, widow of fireman—MARRIAGE; annulment of, effect of on pension—Section 11-1915, RCM, 1947—Section 11-1928, RCM, 1947

Held: A fireman's widow who remarries and whose remarriage is annulled ab initio has remained unmarried under Section 11-1928, RCM, 1947, and is entitled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off.

November 6, 1959

Mr. John J. Holmes
State Auditor
Capitol Building
Helena, Montana

Dear Mr. Holmes:

This is in reply to your question regarding the eligibility of a person to benefit payments as the widow of a deceased member of a fire department relief association.

You advise me that the right to payment in one instance is in doubt because the widow remarried in California, then three months later in California obtained an annulment of the marriage. The decree declared the marriage to be a nullity, "null and void from its inception."

Section 11-1915, RCM, 1947, provides that a fire department relief association may allow its members benefits for the following causes:

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

Section 11-1928, RCM, 1947, provides that such "pension shall be paid to the within named widow only so long as she remains unmarried."

The federal constitution, Art. IV, Sec. 1, requires that Montana give full faith and credit to the judicial proceedings of every other state. California by judicial decree has declared the marriage of this case to be null and void from its inception. We give the decree the same effect.

The general rule regarding the effect of an annulment of marriage is the destruction of the marriage relation *ab initio* and any consequences that the marriage would have had. It places the parties as respects their property rights in the same position as though the marriage had not been performed. (See, 35 Am. Jur., Marriage, Sec. 83). It restores the parties to their former status. (55 CJS, Marriage, Sec. 68).

Application of these general rules makes it plain that the woman described above is restored to her status as a widow and entitled to the rights of a widow of the deceased fireman.

As the widow, her rights relate back in accord with the rule on annulment.

The doctrine of "relation back" where a marriage is annulled as a general principle, applies only where it promotes the purposes for which it was intended (*Sefton v. Sefton*, 291 Pac. (2d) 439).

I have examined the bylaws of the association involved here. I do not find in them or in the applicable code sections any requirement that association benefits begin upon application. They begin when the right accrues. For a widow this is when her husband dies, not when she applies.

This reasoning accords with the rule that a liberal construction, not a narrow one, should be used with pension legislation (*McKeag v. Board of Pension Commissioners*, 21 Cal. (2d) 386, 132 Pac. (2d) 198).

Therefore, it is my opinion that a widow whose remarriage has been annulled *ab initio* as remained unmarried and therefore is en-

titled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off.

Very truly yours,
FORREST H. ANDERSON
Attorney General