

**VOLUME NO. 36****Opinion No. 62**

**FIRE DEPARTMENT RELIEF ASSOCIATION — Membership, retired firemen; FIRE DEPARTMENT RELIEF ASSOCIATION — Retired firemen, eligibility for insurance coverage; FIRE DEPARTMENT RELIEF ASSOCIATION — Benefits, funeral expenses. Sections 11-1923 and 11-1928, Revised Codes of Montana 1947.**

**HELD:** 1. The firemen's relief association may decide whether retired firemen should remain members of the association and what rights and duties they should have in it.

2. Retired firemen are ineligible for the blanket policy of insurance which the firemen's relief association is authorized to purchase under section 11-1928(7), R.C.M. 1947.

3. Funeral expense money provided for in section 11-1928(5), R.C.M. 1947 is payable to the deceased fireman's estate.

March 25, 1976

Mr. William A. Penttila, Chief  
Fire Marshal Bureau  
528 Sanders  
Helena, MT 59601

Dear Mr. Penttila:

You have requested my opinion on the following questions:

1. Is a retired fireman a member of the fireman's relief association; if so, would he be eligible to participate in the association meetings and hold office?
2. Is a retired fireman eligible to be included in the blanket policy of insurance purchased by the relief association according to section 11-1928(7), R.C.M. 1947.
3. Is the widow of a retired fireman or his heirs entitled to funeral expense money upon his death?

**Question 1.** The qualifications for membership in the fireman's relief association are set out in section 11-1923, R.C.M. 1947, which provides:

...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... (Emphasis added)

Affirmatively stated, what is required for relief association membership is that a person become a confirmed member of an organized fire department. However, there is no corresponding provision for mandatory discontinuance of such membership. Absent more explicit statutory or constitutional directives, the relief association membership may establish through by-laws the rules and regulations under which it wishes to operate. If the membership desires to extend to retired firemen the rights to vote and to otherwise participate in its meetings, it is free to do so.

**Question 2.** Section 11-1928, R.C.M. 1947 provides:

Use of disability and pension fund of fire department relief association. Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

7. The payment of premiums upon a blanket policy of insurance covering **the members of such fire department** and providing for payment of compensation in case of death or injury to such member or any of them... (Emphasis supplied)

Subsection (7), above, was enacted into its present form by Chapter 208, Section 8, Session Laws of 1967. It was an amendment of former subsection (7) which was first enacted by Chapter 103, Section 1, Session Laws of 1931 and which provided:

7. The payment of premiums upon a blanket policy of insurance covering **the members of such fire department** and providing for payment of compensation in case of death or injury to such member or any of them **incurred in the line of duty in such fire department.** (Emphasis added)

From former subsection (7) it is unmistakable that the blanket policy of insurance was intended to cover only those members of the fire department who suffered death or injury in the line of duty. Present subsection (7) is identical except that the line-of-duty requirement has been deleted. In other words, the insurance must still apply only to **active** members of the fire department, but payments will be made even if the death or injury occurs off-duty. The 1967 amendment, then, extended the limits of insurance coverage, but did not expand the class of persons covered. Since retired firemen by definition are not active members of the fire department, they are ineligible for the insurance provided for in section 11-1928.

**Question 3.** The provision for funeral expense money is also contained in section 11-1928:

...Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

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5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars (\$750)...

Neither the widow nor the heirs of a deceased fireman are expressly named as parties to receive the funeral expense money. In that event such payment is properly made to the fireman's estate.

**THEREFORE, IT IS MY OPINION:**

1. The firemen's relief association may decide whether retired firemen should remain members of the association and what rights and duties they should have in it.
2. Retired firemen are ineligible for the blanket policy of insurance which the firemen's relief association is authorized to purchase under section 11-1928(7), R.C.M. 1947.
3. Funeral expense money provided for in section 11-1928(5), R.C.M. 1947 is payable to the deceased fireman's estate.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General