

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 22

FIRE DEPARTMENT RELIEF ASSOCIATIONS - Membership of fire chief;
RETIREMENT SYSTEMS - Fire department relief association: membership of fire chief;
MONTANA CODE ANNOTATED - Sections 7-33-4103, 7-33-4106, 7-33-4122;
OPINIONS OF THE ATTORNEY GENERAL - 23 Op. Att'y Gen. No. 144 at 389 (1950).

HELD: A chief or assistant chief of a municipal fire department may be a member of the fire department relief association.

1 July 1981

Arthur W. Ayers, Jr.
City Attorney
P.O. Box 67
Red Lodge, Montana 59068

Dear Mr. Ayers:

You have asked for my opinion on the following question:

May a chief or assistant chief of a municipal fire department be a member of the fire department relief association?

Section 19-11-102(1), MCA, authorizes the formation of a fire department relief association by "the confirmed members of a fire department," and states: "No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association." Your question is whether a chief or assistant chief is a confirmed member of a fire department within the meaning of this statute. My opinion is that a chief or assistant chief is a confirmed member.

Section 7-33-4103, MCA, specifies the composition of a fire department:

Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire

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department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

The procedure for appointment and confirmation is set forth in sections 7-33-4106 and 4122, MCA:

The mayor or manager shall nominate and, with the consent of the counsel or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

§ 7-33-4106, MCA.

Each appointment shall be made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the counsel or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

§ 7-33-4122, MCA. These statutes are plain and unambiguous. See Dunphy v. Anaconda Co., 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968). The confirmed members of a fire department comprise not only firefighters but also the chief and assistant chief or chiefs. Cf. Conley v. Fireman's Relief and Pension Fund Board, 129 Pa. Super. 467, 196 A. 531 (1938) (confirmed fire chief entitled to retirement benefits); see generally State ex rel. Russ v. Fire Department Relief Association, 114 Mont. 430, 136 P.2d 989 (1943). 23 Op. Att'y Gen. No. 144 at 389 (1950).

My research has revealed one case from another jurisdiction holding that a fire chief is not eligible for membership in a firemen's pension fund. State ex rel. Harrell v. City of Wabash, 116 Ind. App. 682, 65 N.E.2d 494 (1946). However, the statutory provisions in that case differ from Montana's in one crucial respect. The Indiana statutes clearly distinguish between members

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of a fire force and a chief. In Montana, as I have indicated above, the statutes contain no such distinction.

THEREFORE, IT IS MY OPINION:

A chief or assistant chief of a municipal fire department may be a member of the fire department relief association.

Very truly yours,

MIKE GREELY
Attorney General