

1902

MUNICIPAL FIRE DEPT.—MEMBER SUSPENDED WITHOUT PAY—NOT A “FINE”—MONEY RETAINED IN TREASURY OF MUNICIPALITY—NO AUTHORITY TO PAY MONEY INTO FIREMEN’S RELIEF AND PENSION FUND—DISABILITY BENEFITS—HEART DISEASE—WHO PAYS COSTS FOR EXAMINATIONS CONDUCTED BY THREE PHYSICIANS—FIREMEN’S RELIEF AND PENSION FUND—§§741.10, .18 (C) R.C.

## SYLLABUS:

1. Where a member of a municipal fire department is suspended without pay for disciplinary reasons, such suspension does not constitute the imposition of a “fine” within the purview of Section 741.10, Revised Code; the amount of the salary which the member would have earned had he not been suspended should be retained in the treasury of the municipality to the credit of the fund from which salaries of firemen are paid; and there is no authority for the payment of said amount into the firemen’s relief and pension fund.

2. Where pursuant to division (C) of Section 741.18, Revised Code, a member of the firemen’s relief and pension fund applies for disability benefits as a result of heart disease not revealed by his entrance physical examination and three physicians are designated to examine said applicant; (1) the municipal corporation should pay the costs of the physician whom it designates, (2) the trustees of the pension fund have a like obligation as to the physician designated by them, and (3) the costs of the third physician should be borne equally by the said two designated agencies.

Columbus, Ohio, December 14, 1960

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

“Several questions have arisen with respect to the administration of Firemen’s Relief and Pension Funds which we believe to be of statewide concern.

“When a fine is imposed against a fireman for disciplinary reasons or as punishment by the authority having charge or control of the fire department, such fine is to be paid into the Firemen’s Relief and Pension Fund. Frequently, as a disciplinary measure or as punishment a fireman is suspended without pay for a period of time by the authority having control of the fire

department. At the present time the withheld salary is not being paid into the Firemen's Relief and Pension Fund.

"In view of these facts, should the withheld salary be retained in the treasury of the municipality to the credit of the appropriation from which the salary is paid or should such withheld salary be paid into the Firemen's Relief and Pension Fund?"

"Recently, the Legislature amended Section 741.18 of the Revised Code with respect to disability arising out of heart disease not revealed by the physical examination passed by the member upon entry to the department. When the member applies for disability benefits for such cause, the municipal corporation designates a physician to examine the applicant, the trustees designate another such physician to examine the applicant, and these two select a third physician. In the larger municipalities, the physician employed by the fire department is usually designated as the examining physician, the board designates a physician and these two select the third.

"The problem arises with respect to the division of the cost of these examinations. As I understand it, the municipality's physician receives no additional compensation for these examinations, under normal circumstances; however, the two other physicians do submit bills for their services. At the present time, the municipalities where this problem arises have offered to pay 50 per cent of the third physician's billing and no more. The trustees of the various pension funds, however, believe the cost of the two physicians in addition to the city's regular physician should be shared equally by the pension system and by the municipality.

"Under such circumstances, your opinion is respectfully requested as to the following question :

"What is the proper division of cost of examination between the municipality and the trustees of the Firemen's Relief and Pension Fund under the facts above outlined?"

Section 741.10, Revised Code, provides :

"All fines imposed as discipline or punishment upon members of the fire department of the municipal corporation by the authority having charge or control thereof \* \* \* shall be credited to the firemen's relief and pension fund."

A fine is an amount imposed as punishment for some offense (Webster's New International Dictionary, Second Edition). Under Section 741.10, *supra*, where a fine is imposed upon a member of the fire depart-

ment, said member makes an actual payment of the amount of the fine, and said amount is credited to the firemen's relief and pension fund.

On the other hand, where a member of the fire department is suspended without pay for a period of time, he does not make a payment. Also, since he is suspended, he does not work and does not earn any salary during the period of suspension. Accordingly, in such a situation there is no "fine imposed" and consequently no amount to be paid into the firemen's relief and pension fund under Section 741.10, *supra*. Answering your first question, therefore, I conclude that the amount of the salary which the member would have earned had he not been suspended should be retained in the treasury of the municipality to the credit of the fund from which salaries of firemen are paid.

Coming to your second question, Section 741.18, Revised Code, provides:

"\* \* \*"

"A member of the fund who applies for disability benefits as a result of heart disease not revealed by the physical examination passed by the member upon entry into the department shall be examined by three physicians; one of whom shall be designated by the municipal corporation; another of whom shall be designated by the trustees of the firemen's relief pension fund and the third shall be selected by the other two previously designated physicians. Each examining physician shall submit a written report of his findings to the board.

"\* \* \*

The section makes no provision for the division of costs for the services of the three physicians, thus, such division must be ascertained from the language used.

The appointment of physicians to make an examination of an applicant under the provision of law here concerned is an administrative duty imposed on the municipal corporation and on the trustees of the pension fund. Clearly, therefore, the municipal corporation must pay the costs of the physician whom it designates and the trustees have a like obligation as to the costs of the physician designated by them. Since the third physician is chosen by the previously designated physicians, it appears logical to conclude that the costs of such third physician should be borne equally by the two designating bodies, and I so conclude.

In summary, therefore, it is my opinion and you are advised :

1. Where a member of a municipal fire department is suspended without pay for disciplinary reasons, such suspension does not constitute the imposition of a "fine" within the purview of Section 741.10, Revised Code; the amount of the salary which the member would have earned had he not been suspended should be retained in the treasury of the municipality to the credit of the fund from which salaries of firemen are paid; and there is no authority for the payment of said amount into the firemen's relief and pension fund.

2. Where pursuant to division (C) of Section 741.18, Revised Code, a member of the firemen's relief and pension fund applies for disability benefits as a result of heart disease not revealed by his entrance physical examination and three physicians are designated to examine said applicant; (1) the municipal corporation should pay the costs of the physician whom it designates, (2) the trustees of the pension fund have a like obligation as to the physician designated by them, and (3) the costs of the third physician should be borne equally by the said two designating agencies.

Respectfully,

MARK MCELROY

Attorney General