

3394.

FIREMEN'S RELIEF AND PENSION FUND — UNDER SECTION 4609 ET SEQ., G.C., VOLUNTEER FIREMEN NOT REQUIRED TO CONTRIBUTE 2% OR ANY OTHER AMOUNT TO SUCH FUND — MAY VOLUNTARILY CONTRIBUTE — BOARDS OF TRUSTEES OF SUCH FUND MAY ADOPT RULES AND REGULATIONS TO DISTRIBUTE FUND TO VOLUNTEER OR PART TIME FIREMEN AND DETERMINE AMOUNT OF COMPENSATION — SECTIONS 4612-4, 4612-5, 4612-6 G.C.

SYLLABUS:

Under the provisions of Section 4609 and cognate sections of the General Code, volunteer firemen are not required to contribute two percent of their compensation as volunteer firemen, or any other amount to the firemen's relief and pension fund, although such firemen may voluntarily contribute such amount as they wish to such a fund.

Under Section 4612-4, General Code, which must be read in connection with Sections 4612-5 and 4612-6, General Code, boards of trustees of firemen's relief and pension funds may adopt rules and regulations providing for the distribution of such funds to volunteer or part time firemen, and determining the amount of compensation that may be paid to firemen of this character.

3394.

Columbus, Ohio, February 6, 1941.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

I have your recent request for my opinion, reading as follows:

“A number of questions concerning interpretation of the Firemen's Pension Fund laws, sections 4600 to 4615 of the General Code, have been cleared up by your opinions previously given to this Department, however, still another question has recently been addressed to this Bureau by city and village officials, that is not covered in the preceding opinions, viz., as to

how and in what manner volunteer firemen are affected by the said pension law.

It will be noted in section 4600-1 G.C., that volunteer firemen may become members of the board of trustees under certain conditions. Section 4609 G.C. provides that only full time firemen shall contribute two percent of their salaries to the pension fund, in one place, and in another place in the same section it is provided that

“Every member of the fire department in each municipal corporation shall be deemed to consent and agree to the deductions * * * unless he shall notify the treasurer of such municipality, in writing, to the contrary, in which event he shall be held to have expressly waived any benefits to which he and his dependents would thereby be entitled from such fund, * * *

In view of the apparently conflicting provisions of the law concerning the status of volunteer firemen, as to whether they shall contribute to the fund and if not as to their future status as beneficiaries, may we request that you favor us with your opinion in answer to the following questions:

Question 1. Are volunteer firemen required to contribute two percent of their compensation as volunteer firemen to the firemen's pension fund, or may they voluntarily make such contributions?

Question 2. Are volunteer firemen whose compensation is based upon hourly rates or a rate for attending each fire or fire drill, eligible as beneficiaries of the firemen's pension fund, by rules of the trustees, whether or not they contribute to the fund two percent of their salaries while members of the municipal fire department?”

Sections 4600-1 and 4609, General Code, referred to in your letter, respectively provide as follows:

Section 4600-1:

“The trustees elected from the membership of the fire department shall be full time regular members of such department as distinguished from volunteer members except in municipalities where there are less than two full time members. In such municipalities volunteer or part time members may be elected to the board of trustees.”

Section 4609:

Each full time regular member of the fire department in each municipal corporation unless objection is made as hereinafter provided, shall contribute two per cent of the annual salary he receives to the firemen's relief and pension fund. Such two per cent shall be deducted by the treasurer of the municipalities from the member's monthly pay, and the amount so received

shall be credited to the relief and pension fund. Each contributing member shall, if he is dismissed or resigns as a member of the fire department in which he is employed, be paid by the board of trustees of the relief and pension fund to which he has contributed the amount of his contribution plus two per cent interest compounded annually, upon demand made by him to the board. Any such person, or his widow or orphans, who has received the amount of his contribution from the relief and pension fund as provided for in this section shall not be entitled to any payment of relief or pension.

Every member of the fire department in each municipal corporation shall be deemed to consent and agree to the deductions made and provided for herein, unless he shall notify the treasurer of such municipality, in writing, to the contrary, in which event he shall be held to have expressly waived any benefits to which he and his dependents would therein be entitled from such fund, but shall be entitled to be paid the amount of any deductions theretofore made from his salary. Persons becoming firemen after the effective date of this act must contribute two per cent of their salary as provided for in this act and shall not have the right to object to such deduction."

In addition to the sections of the General Code mentioned in your letter, Sections 4612-3 to 4612-6, inclusive, of the General Code, are pertinent to your inquiry.

Section 4612-3, General Code, provides that the trustees of a firemen's relief and pension fund may "adopt rules for the allowance of credit toward retirement" of members of the fire department, who have actively served in the armed forces of the United States therein specified "in time of warfare or when armed expeditions were conducted during their period of service," provided that such members were honorably discharged and that such credit may not exceed thirty months. The provisions of this section and the effect thereof were passed upon in Opinion No. 1493, Opinions, Attorney General, 1939, Vol. III, p. 2201, to which your attention is invited.

Sections 4612-4, 4612-5 and 4612-6, supra, respectively read as follows:

Section 4612-4:

"The board of trustees established pursuant to section 4600 of the General Code shall adopt all rules and regulations providing for distribution of the fund including the qualifications of those to whom any portion of it shall be paid and the amount thereof."

Section 4612-5:

“The widows or orphans of a member who has contributed to the firemen’s relief and pension fund shall receive therefrom monthly or semi-monthly payments for such amount as shall be determined by the board of trustees.

The widows or orphans of a deceased member may enforce the payments of the amounts so designated so long as the deceased had not prior to his death received the amount of his contribution as provided for in section 4609 of the General Code.

The board of trustees may by regulation provide for the termination of payments upon the remarriage of widows of members, and may prescribe the age at which payments to orphans shall terminate, which age shall not be less than eighteen years.”

Section 4612-6:

“This act shall apply to all municipalities which operate fire departments employing less than two full time regular members, when the council of any such municipality declares the necessity of providing for relief and pensions for members of its fire department. Upon the declaration of such necessity by the council all the provisions of this act shall apply to the municipality for which the council acts.

This act shall be construed as preserving to volunteer, or part time firemen, all rights to receive the pension provided for under existing laws relating to the firemen’s pension fund.”

Coming now to the first question asked by you, I have no difficulty in reaching the conclusion that while a volunteer fireman is not required to contribute two percent of his annual salary or compensation to the firemen’s relief and pension fund, he may voluntarily contribute such an amount or such other sum as he may wish.

It will be noted that the first sentence of Section 4609, *supra*, provides that each “*full time regular member* of the fire department in each municipal corporation” shall contribute two percent of his annual salary as provided in such section. Nothing in this section, or any other section of the General Code, makes mandatory the contributing by volunteer firemen of any moneys whatsoever to the relief and pension fund here under consideration.

While it is suggested in your request that there are “apparently conflicting provisions of the law concerning the status of volunteer firemen,” when the statutes are examined it will be seen that any apparent

conflict is not real. True it is that the first sentence of the second paragraph of Section 4609 refers to every member of the fire department in each municipal corporation, yet it is expressly provided that such members "shall be deemed to consent and agree to the deductions made and *provided for herein.*" As above pointed out, there is no provision requiring deductions from the compensation of volunteer firemen, and it is manifest that the second paragraph of Section 4609, *supra*, relates only to full time regular members of municipal fire departments, as does the first paragraph. It seems to me that the provisions of this section are so clear that it is unnecessary to resort to any rules of statutory interpretation and construction, but if there be any doubt, the following principle from 37 O. Jur. 606, is applicable:

"An act under consideration should be construed in its entirety. That is to say, the entire act should be examined and considered, and considered as a whole. No provision or part thereof can properly be disregarded in the construction of a statute. To the contrary, every part of the statute should be regarded in connection with the act of which it forms a part, so that all parts should be read together. The sense in which particular words, phrases, or clauses are used is to be ascertained from a view of the whole statute, rather than from isolated passages, except, perhaps, when such passages reach the entire subject-matter of the controversy."

For the above reasons, it is my opinion that volunteer firemen are not required to contribute two percent of their compensation, or any other amount, to the firemen's relief and pension fund.

Quite obviously, however, volunteer firemen may contribute two percent of their compensation, or any other moneys, to such a fund if they so desire. Not only is there nothing in the law preventing the making of donations to firemen's relief and pension funds, but, by the terms of Section 4606, General Code, the trustees of such a fund are expressly authorized to "take by gift, grant, devise or bequest, moneys, or real or personal property, upon such terms as to the investment or expenditure thereof as is fixed by the grantor or determined by such trustees." The mere fact that a person is a volunteer fireman certainly would not prevent such person from making a gift, grant, devise or bequest which the trustees of a firemen's relief and pension fund are authorized to accept.

The answer to your second question is found in Sections 4612-4, 4612-5 and 4612-6, General Code, above quoted.

By the terms of Section 4612-4, *supra*, boards of trustees of firemen's relief and pension funds are authorized to "adopt all rules and regulations providing for distribution of the fund, including the qualifications of those to whom any portion of it shall be paid and the amount thereof." That the Legislature contemplated that pensions might be paid to volunteer firemen is shown by the last paragraph of Section 4612-6, *supra*, to the effect that the act in which these three sections were passed should be construed as preserving to volunteer, or part time firemen the rights to receive pensions provided for under the law as it existed prior to the enactment of these three sections. Whether or not a board of trustees provides for the payment of pensions to volunteer or part time firemen, and the amount of such compensation rests within the sound discretion of such board, in adopting a rule in this respect due consideration should, of course, be given to the length of service of such firemen, the amount of funds available for distribution, the earnings of the volunteer or part time firemen as compared with the number of full time regular firemen and such other factors as are appropriate to the adoption of such rules and regulations.

The question here presented is analogous to that ruled upon in Opinion No. 1493, Opinions, Attorney General, 1939, Vol. III, p. 2201, relating to the adoption of rules providing for the allowance of credit toward retirement of those members of a fire department who have actively served in the armed forces of the United States, as provided in Section 4612-3, General Code. Touching this question, it was said as follows at page 2205:

"You will observe that the trustees are vested with discretionary power to adopt rules for the allowance of credit toward retirement, not exceeding thirty months to 'those members of the fire department who have actively served in the armed forces of the United States army, navy or marine corps in time of warfare or when armed expeditions were conducted during their period of service, and such members have been honorably discharged.' There is nothing in this section to limit the allowance of credit toward retirement to honorably discharged ex-service men otherwise meeting the requirements of the statute, to firemen who were members of the force at or prior to their military or naval service. While the adoption of rules of the kind in question is optional with the trustees, the context of the section under consideration seems to me clearly to indicate an intention on the part of the Legislature that all honorably discharged ex-service men who served in time of warfare or in armed expeditions during their military or naval service should have the benefit of any rules adopted by the trustees."

In view of the plain wording of Sections 4612-4 to 4612-6, inclusive, supra, and applying the reasoning of the opinion quoted above, I conclude that the boards of trustees of firemen's relief and pension funds may provide for the distribution of such funds to volunteer firemen, regardless of whether such firemen contribute any amount whatsoever to such funds.

In view of the foregoing, and in specific answer to your questions, it is my opinion that under the provisions of Section 4609 and cognate sections of the General Code, volunteer firemen are not required to contribute two percent of their compensation as volunteer firemen, or any other amount to the firemen's relief and pension fund, although such firemen may voluntarily contribute such amount as they wish to such a fund.

Under Section 4612-4, General Code, which must be read in connection with Sections 4612-5 and 4612-6, General Code, boards of trustees of firemen's relief and pension funds may adopt rules and regulations providing for the distribution of such funds to volunteer or part time firemen, and determining the amount of compensation that may be paid to firemen of this character.

Respectfully,

THOMAS J. HERBERT,
Attorney General.