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FIREMAN KILLED—WIDOW AND DEPENDENT CHILDREN—SURVIVORS OF VOLUNTEER FIREMAN KILLED IN PERFORMANCE OF DUTIES—ELIGIBLE TO RECEIVE BENEFITS INURING UNDER FIREMEN'S INDEMNITY FUND—NOT PRECLUDED WHEN THEY RECEIVE BENEFITS FROM INDUSTRIAL COMMISSION OF OHIO.

SYLLABUS:

A widow and dependent children, survivors of a volunteer fireman killed in the performance of his duties as a fireman, are eligible to receive and may receive the benefits inuring to them under the firemen's indemnity fund even though they are receiving benefits from the Industrial Commission of Ohio.

Columbus, Ohio, September 18, 1950

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“‘Are the widow and dependent children under sixteen years of age, survivors of a Volunteer Fireman killed in the performance of his duty as such, eligible for benefits from the Township Firemens Indemnity Fund as prescribed under the Firemens Indemnity Laws; if they are receiving benefits from the Industrial Commission of Ohio, out of the State Compensation Funds.’”

Before proceeding to a consideration of your inquiry, it is well to note that a volunteer fireman is a member of a fire department within the contemplation of Sections 4647-1 to 4647-9, inclusive, of the General Code. Opinions of the Attorney General for 1927, page 6. Thus there can be little doubt but that the benefits flowing from the firemen's indemnity fund inure to the benefit of a part time or volunteer fireman as well as to one employed regularly or full time.

It is also to be noted that a volunteer fireman is entitled to the benefits of the workmen's compensation act if he is injured in the course of his employment as a fireman; and that his survivors are entitled to the benefits

of the act if such fireman is killed in the discharge of his duties as a fireman. Opinions of the Attorney General for 1930, Vol. I, page 280.

In view of the above authority, it is apparent that the answer to your inquiry hinges on whether or not there is any provision in the law governing the disbursement of benefits under the firemen's indemnity fund or the workmen's compensation act, which prohibits the survivors of a volunteer fireman, killed in the performance of his duty as a fireman, from receiving the benefits of the firemen's indemnity fund if they are also receiving benefits from the Industrial Commission.

Section 4647-8, General Code, enumerates the beneficiaries of the firemen's indemnity fund and the allowances they are to be paid. This section reads as follows:

"The beneficiaries of any such firemen's indemnity fund shall be members of the fire department or their dependents who shall be entitled to be paid the amounts following:

"For the total disability of a fireman, sustained while in the discharge of his duties as fireman, the sum of two-thirds of his salary or average earnings, which shall in no case exceed eighteen dollars (\$18.00) per week, and which shall be fixed and determined by the said board of firemen's indemnity fund. For partial disability such an amount per week as shall be fixed by the board of firemen's indemnity fund which in no case shall exceed ten dollars (\$10.00) per week. Provided, however, that no such pension shall be paid to a fireman under full salary during the time of any such disability.

"In case of a volunteer fireman the 'average earnings' as used in this section shall be computed on the earnings of such fireman as his regular employment together with his compensation as such volunteer fireman.

"To the widow of any fireman killed while in the discharge of his duties as fireman, or who dies from exposure or injury received while in the discharge of such duty, a sum not to exceed twenty-five dollars (\$25.00) per month, so long as she remains his widow, and the further sum of not to exceed ten dollars (\$10.00) per month for each dependent child under sixteen years of age."

It will be noted that this section specifically provides that the dependents of a deceased fireman are to be paid and are entitled to per se the benefits enumerated therein if the fireman is killed while engaged in the performance of his duties as a fireman or if he dies as a result of exposure or injury received while in the discharge of his duties. That is to say, the

only apparent prerequisite to payment under this section is the death of a fireman while engaged in the performance of his duties as fireman.

Nowhere in Section 4647-8, *supra*, or in the other sections of the General Code relating to the firemen's indemnity fund (Sections 4647-1 to 4647-9, inclusive,) is there any provision prohibiting payment of benefits to dependents of a deceased fireman or providing for a deduction in the amount of such payment, if said dependents are receiving benefits from the Industrial Commission or from any other source. Hence, in considering only those sections of the General Code relating to the firemen's indemnity fund, it is my opinion that the dependents of a deceased fireman are entitled to the benefits of that fund regardless of whether or not they are receiving benefits from the Industrial Commission if the fireman was killed while in the performance of his duties as a fireman.

This leaves for consideration the question of whether or not there is any provision in the workmen's compensation law prohibiting the dependents of a deceased volunteer fireman from receiving benefits under the firemen's indemnity fund if they are receiving benefits from the Industrial Commission.

Relative to this question, suffice it to say that a search of the workmen's compensation law (Sections 1465-37 to 1465-101, General Code) reveals no such provision and that in fact such a provision would not be in keeping with the nature and theory of workmen's compensation.

Hence it is my opinion in specific answer to your inquiry, that the widow and dependent children, survivors of a volunteer fireman killed in the performance of his duties as a fireman, are eligible to receive and may receive the benefits inuring to them under the firemen's indemnity fund even though they are receiving benefits from the Industrial Commission of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.