

2919.

APPROVAL, CERTIFICATE OF AMENDMENT, ARTICLES OF INCORPORATION OF THE FARMERS' MUTUAL HOME INSURANCE COMPANY, MEDINA, OHIO.

COLUMBUS, OHIO, March 9, 1922.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The certificate of amendment to the articles of incorporation of the Farmers' Mutual Home Insurance Company, Medina, Ohio, is herewith returned to you with my approval endorsed thereon.

We are also returning herewith the original articles of incorporation of the company.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2920.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN SCIOTO COUNTY.

COLUMBUS, OHIO, March 9, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2921.

FIREMEN'S INDEMNITY FUND—WHEN IT IS AND IS NOT THE DUTY OF COUNCIL TO MAKE LEVY FOR SAID FUND—SAID LEVY OUTSIDE ALL LIMITATIONS AND NOT SUBJECT TO REDUCTION BY BUDGET COMMISSION—VOLUNTEER FIREMEN OF VILLAGE ARE MEMBERS OF FIRE DEPARTMENT IN CONTEMPLATION OF SECTION 4647-2 G. C. (109 O. L. 90).

1. *Volunteer firemen of a village, duly provided for by council, are members of the fire department in contemplation of section 5647-2 G. C., as enacted in 109 O. L., page 90.*

2. *In municipalities having no firemen's pension fund, and having five or more members of the fire department in addition to the presiding officer of the "Trustees of Firemen's Indemnity Fund," it is the duty of council under section 4647-4 G. C.*

to make a levy not to exceed three-tenths of one mill upon each dollar of the taxable property of the municipality, to provide a firemen's indemnity fund. Council may use its discretion as to the minimum rate of levy, except that the fund provided in section 4647-3 "shall be raised in not less than four years."

3. *In municipalities not having five or more firemen in addition to the presiding officer, the council is not required nor authorized to make such levy.*

4. *When such levy is properly made it is outside of all limitations and not subject to being reduced by the budget commission.*

COLUMBUS, OHIO, March 9, 1922.

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

GENTLEMEN:—In your recent communication you request my opinion upon the question presented by a letter to your department from the auditor of Warren county, which in part reads:

"Will you please ask the Attorney-General's office for an opinion as to section 4647-1 G. C., Vol. 109, page 90, Ohio Laws.

The construction I am asking for is whether the councils of our villages in this county should ask for the three-tenths mills where their fire departments are paid for each fire they attend. I know that several of our villages in this county pay their fire department in this way."

The sections of the General Code, as enacted in 109 O. L., page 90, essential to consider in connection with your inquiry are as follows:

"Sec. 4647-1. That in all municipalities having no firemen's pension fund created under the provisions of chapter I, title 12, division 6 of the General Code of Ohio, and having and maintaining therein a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

"Sec. 4647-2. In all municipalities coming within the provisions of this act there shall be created a board of trustees to be known as 'Trustees of Firemen's Indemnity Fund,' which board shall consist of the director of public safety in municipalities having such officer, and the chief of the fire department in all other municipalities, who shall be the presiding officer of such board; and five other persons, members of the fire department, therein, who shall be elected and serve as provided in sections 4601, 4602, 4603, of the General Code herein. The board shall elect its secretary from any of its own members."

"Sec. 4647-3. The indemnity fund shall consist of an amount of not less than three ten-thousandths of one per cent of the total tax valuation of each municipality, but in no case shall such fund be less than four hundred dollars (\$400.00)."

"Sec. 4647-4. The council or other authority charged with the duty of levying municipal taxes shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal purposes, levy not more than three-tenths of one mill upon each dollar of the taxable property in such municipality, provided that the total of said indemnity fund shall be raised in not less than four years. When the total fund has been once raised the said authorities shall

annually thereafter make such levy as shall bring the amount of the indemnity fund to the amount provided for in this act, all of which levies shall be in addition to all other levies provided by law, and shall not be limited by any law restricting such levies; provided, however, that should the said council or other authority at any time fail or refuse to make and certify the necessary levy for the creation or maintenance of said indemnity fund the said board of firemen's indemnity fund may make and certify to the county auditor the necessary levy for such purposes and such county auditor shall place the same upon the tax duplicate and cause the same to be levied and assessed against the taxable property within the municipality in the same manner as though such levy had been made and certified by the council or other taxing authority; and the taxes when so levied and collected shall be distributed and paid into said indemnity fund."

In opinion number 2826, rendered to your bureau on January 27, 1922, p. 37, Vol. I, 1922, which relates to another phase of this law, it was indicated that volunteer firemen would be entitled to participate in such a pension fund. Section 4390 G. C. authorizes the council of a village to provide for the employment of volunteer firemen. The section heretofore set forth providing for the appointment of "Trustees of Firemen's Indemnity Fund," as set forth in the statute, does not distinguish between volunteer and regularly employed firemen, but provides that such board of trustees shall consist of a presiding officer "and five other persons, members of the fire department, therein." Therefore, this opinion will proceed upon the theory that for the purposes contemplated in this act, one properly employed as a volunteer fireman is a member of the fire department.

Section 4 of the act clearly provides that "after the creation of such board" the council shall levy not more than three-tenths of one mill upon each dollar of the taxable property of the municipality, for the purpose of creating the fund referred to in section 3. It is obvious that it is the duty of council to make the levy, but it may not exceed the maximum of three-tenths of one mill. Council may use its discretion as to the minimum amount it will levy, except that the total amount that is to constitute such fund, as provided in section 3, must be levied by council "in not less than four years."

It will be further observed that the board which constitutes the "Trustees of Firemen's Indemnity Fund" must be composed of five firemen in addition to the presiding officer, and it is not the duty of council to make the levy referred to in section 4 until "after the creation of such board." Therefore it will be seen that until such time as a municipality has five members of the fire department in addition to the presiding officer, and the board is properly organized, council is not charged with the duty of making such levy, nor is it authorized to make the same. However, when there is a sufficient number of firemen to constitute the board, then it is the duty of council to make such levy, and when the levy is so made it is outside of all other limitations and not subject to being reduced by the budget commission.

Respectfully,
JOHN G. PRICE,
Attorney-General.