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FIREMEN'S PENSION FUND—CREATION OF SUCH FUND BY MUNICIPALITY—TRUSTEES THEREOF NOT AUTHORIZED TO PAY PREMIUMS FOR INDEMNITY, LIABILITY OR ACCIDENT INSURANCE FOR MEMBERS.

SYLLABUS:

A board of trustees of a firemen's pension fund established in a municipality according to law has no authority to provide from said fund for the payment of premiums for indemnity liability or accident insurance, for the members of the fire department in the municipality where the pension fund has been created.

COLUMBUS, OHIO, January 26, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“May a Board of Trustees of a Firemen's Pension Fund, legally provide by law for the payment of premiums out of the Pension Fund, for indemnity insurance covering members of the Fire Department, i. e., insurance providing for payment of compensation to such members injured in the line of duty, and for the payment of hospital and other bills incident thereto?”

The establishment and maintenance of a Firemen's pension fund is authorized to the council of any municipal corporation having a fire department supported in whole or in part at public expense by Section 4600 of the General Code of Ohio. Where such a fund is established by the council of a municipal corporation authority is extended by Section 4605, General Code, to levy a tax to maintain the fund. It is also provided by Section 4607, General Code, that certain fines, penalties and license fees shall belong to this fund. Donations and gifts may also be received and credited to this fund, and contributions made thereto by members of the fire department. Sections 4608 and 4609, General Code.

In municipalities where a fireman's pension fund is established there shall be created a board of trustees, known as the “trustees of the firemen's pension fund”, for the purpose of administering the fund. The said board of trustees is authorized by Section 4611, General Code, to invest any moneys received by it to the credit of the fireman's pension fund, other than those raised by taxation, in interest bearing bonds of the United States or of this State, or of any county, township, school district or municipal corporation in the State. Section 4612, General Code, provides as follows:

“Such trustees shall make all rules and regulations for the distribution of the fund, including the qualifications of those to whom any portion of it shall be paid and the amount thereof, but no rules or regulations shall be in force until approved by the director of public safety or the fire chief of the municipality, as the case may be.”

This board of trustees like all administrative boards created by statute has such powers only as are expressly granted to it together with such incidental powers as it may be necessary to exercise to properly carry out the express powers granted, and perform the duties necessary to be performed in order to effect the purpose of its existence.

The statutory provisions noted above being the entire expression of the legis-

lature with reference to the powers of this board of trustees, the substantial legal question involved in your inquiry is whether or not the powers so granted would authorize this board to effect indemnity or liability insurance for the members of the fire department and pay the premium therefor from the fireman's pension fund as created by law, this being the only fund which the said board of trustees is authorized to administer for any purpose whatever.

The purpose of the fund, as its very name implies, is to provide pensions for firemen in accordance with rules and regulations to be adopted by the board of trustees, which rules may indicate the qualifications of the persons to whom any portion of the fund is to be paid. The board of trustees is not authorized to invest these funds except as noted above nor is it authorized to use the funds for the purpose of creating any other fund, but simply to make rules and regulations with reference to the disbursement of the fund to the persons for whose benefit the fund was created. To use these funds for the purpose of paying premiums for insurance would in my opinion be investing the fund and diverting it from its original purpose. The legislature itself established the fund and defined the purpose for which the fund was established and extended no other authority to the trustees than to administer the fund in accordance with the rules to be adopted for the purposes for which the fund was established.

Almost identical provisions are made by Sections 4616 et seq., General Code, for the establishment of a police relief fund and the appointment of trustees for the administration of this fund. These sections of the statute received the attention of the Supreme Court in a recent case—*State ex rel v. Connors*, 122 O. S., 359, where it was held that the powers of the trustees of the police relief fund respecting such fund are statutory. In the course of the opinion in the above case, the court said:

“When the Legislature by Section 4628 made it the mandatory duty of the board of trustees of the police relief fund to make rules and regulations for the distribution of the fund, including the qualifications of those to whom any pension shall be paid and the amount thereof, the Legislature vested in the board of trustees of the police relief fund discretion only to prescribe the rule by which qualifications for pension will be determined and the rule by which the amount of such pension will be computed. Manifestly, the requirement that qualification be determined by rule excludes any implication that the Legislature intended that the board of trustees of the police relief fund should determine qualification in any other manner; and the same is true of the requirement that the amount be determined by rule.”

I find nothing in the statutes relating to the trustees of the fireman's pension fund that could by any possible construction be said to authorize those trustees to use any part of the fireman's pension fund for the purpose of paying premiums for insurance covering members of the fire department.

I am therefore of the opinion, in specific answer to your question, that a board of trustees of the fireman's pension fund can not legally provide for the payment of premiums out of the pension fund for indemnity or accident insurance, or any other kind of insurance for the members of the fire department.

Respectfully,
GILBERT BETTMAN,
Attorney General.