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TOWNSHIP, FIREMEN — REGULAR EMPLOYEES DESIGNATED AS VOLUNTARY FIREMEN—NOMINAL SALARY—SUBJECT TO §3310.09 RC—PAYMENTS REQUIRED TO VOLUNTEER FIREMEN'S DEPENDENTS FUND.

SYLLABUS:

A township which has appointed certain of its regular employees at a nominal salary in addition to their regular compensation, to serve when called, as volunteer firemen, is subject to the provisions of Section 3310.09, Revised Code, and required to make the payments therein stipulated to the Treasurer of State, to the credit of the volunteer firemen's dependents fund, and that such firemen are entitled to the benefits of the provisions of Chapter 3310., of the Revised Code.

Columbus, Ohio, November 15, 1957

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

“I am enclosing a question asked of this office by the Ashtabula Township Trustees, where they state:

‘We have a contract with the City of Ashtabula for fire protection and we have some additional equipment for use in areas

where there is no water available. This equipment is used only upon the order of the City Fire Chief who has access to it at all times. The Ashtabula Township Trustees have designated twenty-one regular employees (employees who are employed to work in the cemeteries, etc.) as auxiliary firemen, each being paid \$1.00 per year and they are all members of the Public Employees Retirement System, because of their regular employment by the Ashtabula Township in other capacities. These men serve only upon the call of the City Fire Chief.'

"So, the question arises, relative to Section 3310.01 of the Revised Code, Section B, where it says:

'* * * or whose employment as a fireman does not in itself qualify him for membership in the public employees' retirement fund. * * *'

"Since these men are not qualified to belong to the Public Employees Retirement Fund *because of their employment as firemen, but rather are qualified due to their other jobs*, are they entitled to protection under Chapter 3310 R. C., in the Volunteer Firemen's Dependents' Fund, and must the township enter the new fund under 3310, R. C.?" (Emphasis added.)

Section 3310.09, Revised Code, reads in part as follows:

"Each political subdivision or fire district maintaining *in whole or in part* a volunteer fire department, *or which employs volunteer firemen* as defined in section 3310.01 of the Revised Code, is hereby declared to be a member of the fund, and shall, on or before November 1, 1957, pay to the treasurer of the state of Ohio, to the credit of the volunteer firemen's dependents fund, the initial premiums set forth as follows: * * *." (Emphasis added.)

There follows a schedule of payments, graduated according to the amount of the tax duplicate.

The answer to your inquiry depends upon whether the township by the proceeding which you have described, is maintaining a volunteer fire department within the meaning of this statute. It is to be noted that it may maintain such department "in whole or in part," and may bring itself within the statute if it "employs volunteer firemen as defined in Section 3310.01, Revised Code."

Referring then to division (B) of Section 3310.01, Revised Code, we find "volunteer fireman" defined as follows:

"(B) 'Volunteer fireman' means a duly appointed fireman on either a *non-pay* or *part-pay basis*, and who is otherwise ineli-

gible to be a member of a *firemen's relief and pension fund* or whose employment as a fireman does not in itself qualify him for membership in the public employees' retirement fund. It shall also include firemen drafted, requisitioned, or *appointed to serve in an emergency.*" (Emphasis added.)

It appears clear that the words "a firemen's relief and pension fund" here used, would include not only the funds created in municipalities under Section 741.01, *et seq.*, Revised Code, but also the "township firemen's relief and pension fund" which every township is required to establish under Section 521.01, Revised Code, if it has "two or more full time regular firemen."

Division (C) of the same section contains this definition :

"(C) 'Members of the Fund' shall mean all political subdivisions maintaining *in whole or in part* a volunteer fire department or *employing volunteer firemen.*" (Emphasis added.)

The reference to the public employees' retirement system is a bit confusing. Under Section 145.01, Revised Code, township employees generally, are included within that system. This would include members of a township fire department, unless we find some provision in the law which would exclude them.

Section 145.02, Revised Code, provides :

"Sections 145.01 to 145.57, inclusive, of the Revised Code do not apply to a police relief and pension fund or a firemen's relief and pension fund. No employee except one who comes within a police relief and pension fund or a *firemen's relief and pension fund*, or a municipal retirement system, shall be excluded from membership in the public employees retirement system because of membership in any other retirement system established under the laws of this state or under any charter unless he is receiving a disability allowance from such other retirement system." (Emphasis added.)

A member of a volunteer fire department such as is contemplated by Section 3310.01, *et seq.*, *supra*, is certainly not, by reason of such membership, within the exclusion set forth in said Section 145.02, Revised Code, but he is within such system by reason of his general employment.

When the legislature, in defining a "volunteer fireman," used the expression "one * * * whose employment as a fireman does not in itself qualify him for membership in the public employees retirement fund," it

was certainly employing awkward language to emphasize the idea that a volunteer fireman is not eligible for membership in that fund.

The meaning of "volunteer fireman" is further explained and broadened by the last sentence of the above quoted division (B):

"It shall also include fireman drafted, requisitioned or *appointed to serve in an emergency.*" (Emphasis added.)

Whether we consider that the township's regular employees who are to drop their regular duties and rush the township's special equipment to a fire, when called by the chief of the city department, are "duly appointed firemen on part-pay basis," or are "firemen appointed to serve in an emergency," they are certainly "volunteer firemen" within the definition. Furthermore, the township in question is certainly employing these volunteer firemen and has appointed them to special duties as firemen, and therefore, as stated in Section 3310.09, *supra*, it "is hereby declared to be a member of the fund and shall, on or before November 1, 1957, pay to the treasurer", *etc.*

A reading of the new law contained in Sections 3310.01, *et seq.*, Revised Code, must convince one that it was the intention of the General Assembly to extend the protection of pensions to the dependents of all persons who, as full-time or part-time employees of a public body are required to risk their lives in extinguishing fires. And in view of the language of the statutes, it is our duty to give the statutes a liberal construction.

Accordingly, it is my opinion and you are advised that a township which has appointed certain of its regular employees at a nominal salary in addition to their regular compensation, to serve when called, as volunteer firemen, is subject to the provisions of Section 3310.09, Revised Code, and required to make the payments therein stipulated to the Treasurer of State, to the credit of the volunteer firemen's dependents fund, and that such firemen are entitled to the benefits of the provision of Chapter 3310., Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General