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1. FIRE DEPARTMENT, MUNICIPAL—PART TIME OR VOLUNTEER MEMBERS—WHEN THEY CONTRIBUTED TWO PER CENT OF EARNINGS TO FIREMEN'S RELIEF AND PENSION FUND—ARE STILL IN SERVICE—"MEMBERS OF FIRE DEPARTMENT"—"MEMBERS OF THE FUND"—REQUIRED TO CONTRIBUTE FOUR PER CENT OF EARNINGS TO FUND—EFFECT OF HOUSE BILL 195, 97TH GENERAL ASSEMBLY—SECTIONS 4612-4, 4615-1 G. C.
2. PART TIME OR VOLUNTEER FIREMAN—ON EFFECTIVE DATE OF HOUSE BILL 195, 97TH GENERAL ASSEMBLY—WAS CONTRIBUTING TWO PER CENT OF ANNUAL SALARY TO FIREMEN'S RELIEF AND PENSION FUND—ENTITLED TO BENEFITS OF SECTION 4614-1 G. C.

## SYLLABUS:

1. Where, prior to the effective date of House Bill No. 195 of the 97th General Assembly, part time or volunteer members of a municipal fire department contributed two per cent of their earnings for the firemen's relief and pension fund and are still in service in such department after the enactment of said House Bill No. 195, they thereby become "members of the fire department" and "members of the fund" as defined in Section 4615-1, General Code, are required to contribute four per cent of their earnings to such fund, and are entitled to the benefits of Section 4612-4, General Code, as enacted in said House Bill No. 195.

2. A part time or volunteer fireman who on the effective date of House Bill No. 195 of the 97th General Assembly, was contributing two per cent of his annual salary to a firemen's relief and pension fund, is entitled to the benefits of Section 4614-1 of the General Code.

Columbus, Ohio, January 26, 1948

Bureau of Inspection and Supervision of Public Offices

Columbus, Ohio

Gentlemen:

I have before me your communication, in which you request my opinion relative to the rights of volunteer or part time firemen to participate in the benefits of the pension fund as provided by the statutes, particularly as amended by House Bill 195 passed by the 97th General Assembly. The questions which you have submitted are as follows:

"1. Where a municipal corporation employs part time firemen who receive no regular salary but are compensated for their services at fires, drills and meetings on an hourly basis, and such part time firemen have contributed an amount equal to 2 per cent of their earnings prior to enactment of H. B. 195, are such part time firemen qualified for membership in the Firemen's Relief and Pension Fund; entitled to participate in the benefits of the pension fund as set forth in Section 4612-4, General Code, and required to make the 4 percent contribution provided in Section 4600, General Code?"

"2. When the rules adopted by a local Board of Trustees of the Firemen's Relief and Pension System, prior to the enactment of H. B. 195, provide that such part time firemen shall receive a pension in the amount of \$5.00 per month, do such part time firemen have an election under the provisions of Section 4614-1, General Code, to receive the amount of pension so provided?"

Prior to 1939 there was no provision in the law requiring contributions by a fireman to the pension fund or authorizing any deduction from his salary. He was authorized to make voluntary contributions, which would be used to augment the benefits payable to him from the fund. In the act of 1939, Section 4609 General Code, was so amended as to provide in part, as follows:

"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." (Emphasis added.)

This was followed by a provision that the firemen employed at that time might exempt themselves from this payment and waive the benefits of the fund. In House Bill No. 195, this section was so amended as to authorize the treasurer of the municipal corporation to deduct from the salary of such member of the fire department four per cent of his salary.

The statutes relative to the firemen's relief and pension fund appear for a long time to have recognized the right of municipalities to include in such fund not only full time regular members of the fire department but also part time and volunteer members. Prior to the amendment of 1939, Section 4600, General Code, in authorizing municipalities to establish such fund, did not predicate that authority on having "full time regular mem-

bers" of the fire department. It merely authorized any municipality "having a fire department supported in whole or in part at public expense" to establish such fund. Section 4600-1 General Code, provided as follows:

"Trustees shall be full time regular members of such department as distinguished from volunteer members except in municipalities where there are less than five full time members.

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 firemen's pension fund."

In the revision of 1939 that section was amended, and still remains in the following wording:

"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."

In 1939 Section 4612-6 General Code, was introduced reading as follows:

"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."

It becomes important at this point to note the definitions which have been introduced into the new law, of "member of the fire department" and "member of the fund". Section 4613-1 General Code, reads as follows:

"The following words and phrases as used in sections 4600 through 4615-1 of the General Code, both inclusive, shall have the following meanings:

"Member of the fire department' shall mean any person *who receives an original appointment* as a fireman from a duly established civil service eligible list, or *who is appointed* to a posi-

tion in a fire department pursuant to section 4389 of the General Code, or who, on the effective date of this act, is contributing two per cent of his annual salary to a firemen's relief and pension fund established pursuant to section 4600 of the General Code.

“‘Member of the fund’ shall mean any person *who is contributing four per cent* of his annual salary to the firemen's relief and pension fund established pursuant to section 4600 of the General Code, or *who is receiving a pension or disability benefits* from said fund as a result of service in the fire department.”

(Emphasis added.)

It will be observed that these definitions are to be applied to every provision of the statutes old and new, which relate to the firemen's relief and pension fund. The question, therefore, arises whether the volunteer or part time firemen mentioned in your letter come within the definitions above quoted. In Opinion No. 2457 which I rendered December 4, 1947, it was held that the definition of “member of the fire department” included only those who were appointed to the department after the effective date of the act, unless they were contributing at the rate of two per cent to a firemen's relief and pension fund prior to the effective date of the act. It would therefore exclude firemen who had served in a fire department in a municipality that had not established a firemen's pension fund.

The question then arises whether these part time firemen mentioned in your letter, can qualify under the definition as “members of the fire department” by reason of the fact that they have been contributing two per cent of their salary.

As I have already pointed out, Section 4609, General Code, prior to the recent amendment, did not authorize any payment by or deduction from the salary of any fireman except regular full time firemen. It might, therefore, be argued that if volunteer or part time firemen did contribute, they would not thereby attain to a legal status which would entitle them to be considered as falling within the definition of “members of the fire department” as set out in Section 4615-1 supra. It appears to me, however, that that contention has been laid to rest by an opinion of my immediate predecessor found in 1941 Opinions of the Attorney General, page 37, in which it was held:

“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 they may be paid to firemen of this character."

The conclusion follows that part time or volunteer firemen who, prior to the effective date of House Bill No. 195, of the 97th General Assembly, were contributing two per cent of their salary to a firemen's relief and pension fund, are "members of the fire department" within the definition in Section 4615-1, General Code.

Turning to the definition of "member of the fund," we note that a fireman must come within one of two classes in order to be a "member of the fund." Either he must be one who subsequent to the effective date of the recent amendment, was contributing four per cent of his annual salary, or he must be receiving a pension or disability allowance from said fund as a result of service in the fire department.

As already noted, Section 4609, General Code, requires a contribution of four per cent by each "member of the fire department." I assume from your statement that the firemen in question are still in service. Therefore, a contribution of four per cent of their salaries is compulsory.

Section 4612-4, General Code, governs the amount of pensions and disability allowance for all members of the fund. It reads in part:

"Members of the fund who, on or after the effective date of this act, are granted pensions or disability benefits by the trustees of a firemen's relief and pension fund shall be entitled to receive pensions and benefits as provided for in paragraphs 1 through 4, both inclusive, of this section."

There follows a schedule of the pensions and benefits which are to be paid members on disability or retirement. This section makes no discrimination between part time and full time members.

Accordingly, and in specific answer to your first question it is my opinion that where, prior to the effective date of House Bill No. 195 of the 97th General Assembly, part time or volunteer members of a municipal

fire department contributed two per cent of their earnings to the firemen's relief and pension fund and are still in service in such department after the enactment of said House Bill No. 195, they thereby become "members of the fire department" and "members of the fund" as defined in Section 4615-1, General Code, are required to contribute four per cent of their earnings to such fund, and are entitled to the benefits of Section 4612-4, General Code, as enacted in said House Bill No. 195.

Your second question relates to the right of part time or volunteer firemen to avail themselves of the benefits of Section 4614-1. That section reads:

"Persons who, on the effective date of this act, have been contributing two per cent of their annual salary to a firemen's relief and pension fund may elect to receive benefits and pensions from said fund in accordance with the rules and regulations governing the granting of pensions and benefits therefrom in force on the first day of April, 1947. Such election must be in writing and filed with the trustees of said fund within sixty days after the effective date of this act. Provided, however, such persons shall be required to contribute to the fund in the manner and in the amount provided for in section 4609 of the General Code."

I do not consider it necessary to analyze that section or to point out just what the election mentioned would accomplish. The discussion which has preceded, would seem to lead clearly to the conclusion that part time or volunteer firemen would have the same right as full time firemen to take advantage of the provisions of that section. It may be observed that the sixty days allowed for filing the election has long since passed, and this opinion will therefore apply only to such members as may have exercised the right of election within that period.

Accordingly, and in specific answer to the questions which you have submitted, it is my opinion:

1. Where, prior to the effective date of House Bill No. 195 of the 97th General Assembly, part time or volunteer members of a municipal fire department contributed two per cent of their earnings to the firemen's relief and pension fund and are still in service in such department after the enactment of said House Bill No. 195, they thereby become "members of the fire department" and "members of the fund" as defined in Section 4615-1, General Code, are required to contribute four per cent of

their earnings to such fund, and are entitled to the benefits of Section 4612-4, General Code, as enacted in said House Bill No. 195.

2. A part time or volunteer fireman who on the effective date of House Bill No. 195 of the 97th General Assembly, was contributing two per cent of his annual salary to a firemen's relief and pension fund, is entitled to the benefits of Section 4614-1 of the General Code.

Respectfully,

HUGH S. JENKINS,  
Attorney General.