

1526.

FIREMEN'S PENSION FUNDS—CREATED UNDER SECTIONS 4600 TO 4615, G. C.—BOARD OF TRUSTEES MAY LEGALLY ADOPT RULES AND REGULATIONS IN REPAYMENT OF RELIEF OR PENSIONS—WHEN INJURY OR DEATH OCCURRED IN MANNER OR FROM SOURCE DISCONNECTED WITH REGULAR COURSE OF EMPLOYMENT.

SYLLABUS:

The board of trustees of firemen's pension funds, created under Sections 4600 to 4615, inclusive, of the General Code, may legally adopt rules and regulations providing for the payment of relief or pensions to persons eligible therefor when an injury or death has occurred in a manner or from a source disconnected with the regular course of employment in the fire department.

COLUMBUS, OHIO, December 7, 1939.

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

GENTLEMEN: I have your request for my opinion, which reads as follows:

“May the Board of Trustees of Firemen Pension Fund, under Section 4600 et seq., legally adopt rules and regulations providing for the payment of pension or relief when injury or death is incurred in a manner or from a source unconnected with regular course of employment in the Department.”

Provisions for the establishment and administration of “Firemen's Pension Fund” are contained in Sections 4600 to 4615, inclusive, of the General Code.

Most of these sections were amended by the 93rd General Assembly in Amended Substitute Senate Bill No. 52, which became effective on August 10, 1939. Among others is the section providing for the distribution of the fund brought into existence under the sections above enumerated, viz., Section 4612-4, which reads as follows:

“The board of trustees established pursuant to section 4600 of the General Code shall adopt all rules and regulations providing for distribution of the fund including the qualifications of those to whom any portion of it shall be paid and the amount thereof.”

This section takes the place of former Section 4612, General Code, which was repealed in Amended Substitute Senate Bill No. 52, and which read:

“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 a majority of the board of trustees.”

It will be observed that there are no substantial difference in the two sections, the chief changes being the substitution of the word “adopt” for the word “make”, and the elimination of the former provision that no rules or regulations should be enforced until approved by a majority of the board of trustees.

Touching Section 4612 as it read prior to its repeal, it was held in Opinion 1697, Opinions Attorney General 1930, Vol. 1, page 517, as follows:

“1. The trustees of a city firemen’s pension fund may legally adopt a rule providing for payment out of the pension fund of hospital expenses, nursing and similar items for injured firemen.

* * * * *

3. Such trustees may legally provide for the payment out of the pension fund of the funeral expenses of deceased members of the department who were not killed in the performance of duty and who did not die as the result of injuries received in the performance of duty, if in the discretion of said board such rule is proper.

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5. Such board of trustees may legally adopt a rule for the payment of compensation to members of said department equal to the regular salaries during illness which is not the result of injuries received during the performance of duty, if in the discretion of said board such rule is proper.

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At page 522 of the opinion proper, it was said as follows:

“The law authorizes the board of trustees to provide for the distribution of the fund and to determine the qualifications of those to whom any portion of the fund shall be paid. The sections of the Code, hereinbefore mentioned, must not be confused with the so-called ‘firemen’s indemnity fund,’ which is provided for under Section 4647-1, et seq., of the General Code, and which require the establishment of such fund in all municipalities having no firemen’s pension fund.

Section 4647-8, which relates to the distribution of said indemnity fund, expressly designates the method of distribution

and who shall be regarded as beneficiaries thereof. However, as hereinbefore indicated, there is no limitation placed upon the board of trustees of the firemen's pension fund or the police relief fund, but the method of distribution thereof is left apparently to the sound discretion of such boards. While, as hereinbefore indicated, the fund relates to 'relief' in case of a policeman, as contradistinguished from the term 'pension' as used in connection with firemen, yet, as a pension is nothing other than a relief usually gratuitously given, it is believed there is no valid distinction between the two terms."

I concur with my predecessor in office in the above opinion and since, as above pointed out, the only change in the law has been to liberalize the section under consideration, I reach the same conclusion.

In view of the foregoing, and in specific answer to your question, it is my opinion that the board of trustees of firemen's pension funds, created under Sections 4600 to 4615, inclusive, of the General Code, may legally adopt rules and regulations providing for the payment of relief or pensions to persons eligible therefor when an injury or death has occurred in a manner or from a source disconnected with the regular course of employment in the fire department.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1527.

LEASE—OFFICE SPACE, STATE WITH M. A. BRADLEY ESTATE, FOURTH FLOOR, 1242 WEST THIRD STREET, CLEVELAND, USE, BUREAU OF UNEMPLOYMENT COMPENSATION.

COLUMBUS, OHIO, December 7, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain rental agreement between the M. A. Bradley Estate and the State of Ohio, acting through you as Director of the Department of Public Works for the Bureau of Unemployment Compensation.

By this agreement, which is one for a month to month tenancy at \$100.00 per month, I find that certain premises situated in the city of Cleveland, Cuyahoga County, which are particularly described as a portion of the fourth floor of the building known as 1242 West Third Street, con-