

Avenue, who are to be assessed, have had no notice of the resolution declaring the necessity of the improvement.

In view of the foregoing, I advise you not to purchase the above bonds.

Respectfully,

GILBERT BETTMAN,
Attorney General.

625.

MUNICIPALITY—SERVED BY VOLUNTEER FIRE DEPARTMENT—
RIGHT TO ESTABLISH PENSION FUND.

SYLLABUS:

Under the provisions of amended Senate Bill No. 79, enacted by the 88th General Assembly, a municipality having a volunteer fire department which is supported in whole or in part at public expense, may establish a firemen's pension fund, for the benefit of volunteer firemen properly employed by such municipality.

COLUMBUS, OHIO, July 17, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication which reads:

“May a city having a volunteer fire department supported in part at public expense and having no full time members thereof, legally provide for a pension fund and the distribution thereof in accordance with the provisions of Amended Senate Bill No. 79, effective July 10, 1929?”

Section 4600 of the General Code, as amended in Amended Senate Bill No. 79, as enacted by the 88th General Assembly, provides:

“In any municipal corporation having a fire department supported in whole or in part at public expense, the council by ordinance may declare the necessity for the establishment and maintenance of a firemen's pension fund. Thereupon a board of trustees, who shall be known as ‘trustees of the firemen's pension fund’ shall be created, which shall consist of six members who shall be chosen in the following manner: Two members shall be chosen by the city or village council, or other legislative body from among its own members; two members shall be elected by the fire department from members of its own department; two other members shall be residents of the municipality and not members of the council or other legislative body or of the city or village fire department, one of whom shall be chosen by the two members chosen by the municipal council or other legislative body, and one shall be chosen by the two members elected by the members of the fire department. In the event of a tie vote on any matter whatsoever, the six members so chosen shall choose a seventh member, whose vote shall decide the question.”

Section 4600-1, General Code, as enacted in the same act, provides:

"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 the firemen's pension fund."

While it seems somewhat inconsistent to have a pension fund in the case of volunteer members, yet the act seems to expressly recognize that such members may receive pensions.

Section 4600, supra, expressly provides that in any corporation having a fire department supported in whole or in part at public expense, the council may provide for the establishment of a firemen's pension fund. There is no inhibition in said section against a municipality establishing a pension fund for volunteer firemen. The phrase "supported in whole or in part at public expense" is broad enough to include a volunteer fire department which is receiving support from the municipality. While, of course, there are other provisions of the Code which relate to a firemen's indemnity fund under the provisions of Section 4647-1, et seq., General Code, and it might be argued that in Section 4600-1, supra, the legislature was referring to benefits established under that act, it is not believed that Amended Senate Bill No. 79 necessarily makes such limitations. Section 4647-1 makes mandatory the creation of an indemnity fund in all municipalities having no pension fund and which have "a fire department supported in whole or in part at public expense." It has been held that one properly employed as a volunteer fireman is a member of a fire department in contemplation of said section. Opinions of the Attorney General, 1927, p. 6. Inasmuch as practically the same language was under consideration in the said opinion as is considered herein, the holding of said opinion, by analogy, is applicable to your question.

In conclusion, it may be stated that Amended Senate Bill No. 79 authorizes the creation of a firemen's pension fund in any municipality where the fire department is supported in whole or in part at public expense and does not inhibit creating such a fund in a municipality wherein the members of the fire department are volunteers. In fact, the statutes contemplate the establishment of volunteer fire departments and the employment of volunteer firemen. (See Section 4390, General Code.)

You are therefore specifically advised that it is my opinion that, under the provisions of Amended Senate Bill No. 79, enacted by the 88th General Assembly, a municipality having a volunteer fire department which is supported in whole or in part at public expense, may establish a firemen's pension fund, for the benefit of volunteer firemen properly employed by such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

626.

OFFICES INCOMPATIBLE—DEPUTY STATE FIRE MARSHAL AND
MUNICIPAL COUNCILMAN.

SYLLABUS:

Under the provisions of Section 4207, General Code, a deputy state fire marshal may not legally hold the office of member of a city council while he is acting in such capacity. However, under the statutes, there is no inhibition against a state fire marshal