

2930.

MUNICIPAL CORPORATIONS—FIREMEN'S INDEMNITY FUND—UNDER SECTION 1465-61 G. C. FIREMEN IN CITIES ARE EXEMPT FROM BENEFITS OF STATE INDUSTRIAL INSURANCE WHERE SUCH FIREMEN ENTITLED TO PARTICIPATE IN PENSION FUND UNDER SECTION 4600 OR 4647-1 G. C. ET SEQ.—WHEN FIREMEN ENTITLED TO BENEFITS OF STATE INDUSTRIAL INSURANCE AND ALSO PENSION FUND.

*Under the provisions of General Code section 1465-61 G. C., firemen in cities are exempted from the benefits of state industrial insurance where such firemen are entitled to participate in a firemen's pension fund established under General Code sections 4600 et seq. or 4647-1 et seq. of the General Code.*

*Firemen in villages are entitled to the benefits of state industrial insurance and also to the benefits of any fund established for their protection under General Code section 4600 et seq. or 4647-1 et seq. G. C.*

COLUMBUS, OHIO, March 15, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department on the action taken by the Industrial Commission of Ohio on January 25, 1922, which action is as follows:

"In the matter raised by the question of Joseph T. Tracy, Auditor of State, as to the application of the latter part of Sec. 1465-61 G. C. providing 'that nothing in this act shall apply to police or firemen in cities' when considered in connection with the first paragraph of said section and the law enacted by the last legislature, providing for local taxation for and payment to members of fire departments in all Ohio municipalities, the Commission, after noting the language above referred to, and in order to clarify the law as hereafter to be administered by the Industrial Commission of Ohio in so far as firemen in cities and villages are concerned, directs that the matter be referred to the Attorney-General for an interpretation and opinion as to whether or not as this section of the law now stands, the Commission would be authorized or required to make any award for compensation to any firemen, either in cities or villages of Ohio, since the enactment of such new section 4647 as found in O. L. 109, page 90."

General Code section 1465-61 is in part as follows:

"Sec. 1465-61. The terms 'employee,' 'workman' and 'operative' as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to policemen or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's

pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws."

In the above quotation it is noted that the act shall not apply to firemen in *cities* where the injured fireman was eligible to participate in any firemen's pension fund now or hereafter established and maintained by municipal authority under *existing laws*.

The words "*existing laws*" mean laws in existence at the time of the passage of this statute, which passage was, in so far as the words "existing laws" are concerned, first on the 26th day of February, 1913. The section was amended several times, but no change was made therein as to the reading of the last sentence of part 1 of General Code section 1465-61, as above quoted, which section was passed in its present form on April 17, 1919 (108 O. L., Part I, p. 316).

As to the meaning of "existing laws" in *Lawrie vs. State*, 5 Ind. 525, 526, it is said:

"'Existing laws,' as used in 1 Rev. St. 1852, c. 92, providing that all crimes and misdemeanors committed under existing laws shall be punished in the same manner and to the same extent as if such laws had not been repealed, refers to the laws in existence at the time of the passage of the act."

In *City of Jonesboro vs. Cairo*, 110 U. S., 192, it is said:

"The clause of Const. 1870, declaring that no county, city, town, township or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation to or loan its credit to such corporation, but providing that the clause shall not defeat the right of any municipality to make such subscriptions where the same have been authorized 'under existing laws' by the vote of the people prior to the adoption of the constitutional provision, meant under laws existing at the time of the adoption of the constitution, rather than to the time when the vote of the people was taken."

The firemen's pension fund law, in existence at the time of the passage of General Code section 1465-61, was contained in General Code sections 4600 et seq. This act creating the firemen's pension fund was passed by the General Assembly April 4, 1909, and provides for the levying of a tax for the purpose of establishing and maintaining such fund, as well as other means for its maintenance in case a tax is not properly levied. This act is permissive. Municipalities might create such a fund should they see fit to declare the necessity therefor.

Under the interpretation of the term "existing laws," in the above cited cases, this last referred to act, being the only law relating to firemen's pension funds in existence at the time of the passage of General Code section 1465-61, can be the only law in the mind of the General Assembly and it was firemen protected by such pension fund then established, or established later under that law, which exempts city firemen from the protection of state industrial insurance.

Under the firemen's pension act of April 4, 1909, the tax levying section is in part as follows:

"Sec. 4605. In each municipality availing itself of these provisions, to maintain the firemen's pension fund, the council thereof each year, in the

manner provided by law for other municipal levies, and in addition to all other levies authorized by law, may levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property, as listed for taxation in such municipality. \* \* \*

March 30, 1921, the General Assembly passed the act (Senate Bill No. 86) providing for a firemen's indemnity fund in municipalities which had *no such fund*. These words in the title of the act are immediately followed by section 1 of the act which provides an indemnity fund in municipalities having no pension fund. This act in no way changes the pension fund as provided by General Code section 4600, et seq., but said bill, in the last paragraph of General Code section 4647-8, reads as follows:

"Nothing in this act contained shall be deemed to preclude or limit any municipality from availing itself of the provisions of chapter I, title 12, division 6 of the General Code of Ohio, and a municipality having a firemen's indemnity fund created and maintained under the provisions of this act may at any time avail itself of the said provisions of the General Code and thereupon the provisions of this act shall not apply to such municipalities."

However, it is believed that Senate Bill 86, 109 O. L., 90, is supplemental to the pension fund law provided by General Code sections 4600 to 4647 inclusive. In fact the code sections of Senate Bill 86 are indicated as 4647-1 et seq. It seems apparent that the principal intention of the General Assembly was to make mandatory the act contained in General Code sections 4600 et seq.

General Code section 4647-1 is as follows:

"That in all municipalities having no firemen's pension fund created under the provisions of chapter I, title 12, division 6 of the General Code of Ohio, and having and maintaining therein a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

The tax levy in Senate Bill 86 was the same as the pension law tax levy and section 4647-4 is in part as follows:

"The council or other authority charged with the duty of levying municipal taxes shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal purposes, levy not more than three-tenths of one mill upon each dollar of the taxable property in such municipality, \* \* \*"

Certain rules as to payment of benefits are specified in Senate Bill 86, where such rules were before left to the pension fund trustees under General Code section 4600 et seq.

The indemnity fund and the pension fund were both for the protection of firemen and are considered to be the same. Courts have held that there is no magic in a word. Here the purpose of the fund is identical. Based on the above observations, it is believed that the effect of Senate Bill 86 was to make mandatory a law which before was permissive and that therefore the fund provided by Senate Bill 86 was authorized by General Code sections 4600 et seq. at the time of the passing by the General Assembly of General Code section 1465-61.

In a former opinion of the Attorney-General, 1920 Opinions, 415, at page 416, after referring to court decisions, it is said :

“It will be observed that in effect the operation of a supplemental section is very similar to an amendment. As stated by the lexicographers, ‘to supplement’ means ‘to fill up or supply by additions ; to add to or something added to a thing to complete it.’ In fact the authorities generally concede that a supplement to a statute is a form of amendment and the courts have frequently held that an amended section is to be treated as if it were a part of the original act.

The supplement under consideration is of the same general import as the original section ; that is, it relates to the protection, safety and health of the mining employe.”

This brings us to the conclusion that firemen of cities participating in funds established under the provisions of General Code sections 4600 et seq. or Senate Bill 86 are prohibited from participation in state industrial insurance.

Referring again to General Code section 1465-61, the last sentence of part one of that section reads as follows :

“Provided that nothing in this act shall apply to policemen or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen’s or firemen’s pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws.”

It is to be noted that in part one of said General Code section 1465-61 *cities* and *incorporated villages* are mentioned at least twice. This makes it quite apparent that the General Assembly meant what it said when it exempted firemen of cities only from the protection of state insurance. The General Assembly knew of protection afforded firemen when it passed section 1465-61 and it exempted from the protection of state insurance city firemen only.

We must interpret what the legislature said and not what it intended to say. In *Sheu vs. State*, 83 O. S. 146, the court said :

“In the construction of a statute the question is, what did the legislature mean by what it said ; but not, what did it mean to say.”

In *Sipe vs. State*, 86 O. S., 80, it is said :

“If the language of the statute is clear and unambiguous, the intention thus expressed must be given effect by the courts, even if it is absurd or unjust.”

In *Elmwood Place vs. Schanzle*, 91 O. S. 354, the court said :

“The question is, what is the meaning of that which the General Assembly enacted ; and not, what did the General Assembly intend to enact.”

From this plain wording of the statute city firemen are exempted from and village firemen are included in the protection of state industrial insurance.

Sight has not been lost of the possible question of the uniform operation of this law, but no opinion is given on that point.

You are therefore advised that firemen of cities protected by a fund established under General Code sections 4600 et seq. or General Code sections 4647-1 et seq. are exempted from the benefits of state industrial insurance, while firemen of villages are entitled to the protection afforded by funds created under the above mentioned sections and the protection of the state industrial insurance.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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2931.

OCCUPATIONAL DISEASES—THE WORD “SKIN” AS USED IN SECTION  
 1465-68a G. C. PASSED UPON.

*The term “skin” as used in section 1465-68a G. C., in item 11 of the schedule thereof, is used in its common, ordinary and general sense to mean the outer covering of the body, as distinguished from the mucous membrane lining the passages connected with the alimentary tract and respiratory organs.*

COLUMBUS, OHIO, March 15, 1922.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of the receipt of a request for an opinion of this department, which reads as follows:

“Re: Claim No. O. D. 102—A. D. S.  
 Claim No. O. D. 28—J. M.

At a hearing of the above claims on January 31, 1922, the commission ordered that the above claims be referred to you for opinion as to construction to be given to section 11 of the Schedule of Occupational Diseases as found in section 1465-68a of the General Code.

The proof in both of these claims shows that the claimants were suffering from inflammation of the mucous lining of the throat and bronchial tubes which undoubtedly was caused from the inhaling of fumes by them while in the course of their employment.

The question here to be determined is whether section 11 of the aforesaid schedule is to be interpreted to include infections of the mucous lining of the throat, nose and bronchial tubes, or whether such infection or inflammation as specified therein is confined to the skin alone.

In view of the fact that this question is rather of a medical nature, I am enclosing for your consideration a copy of a letter from Dr. E. B. Starr of the Department of Health, addressed to the Occupational Disease Department, setting forth their views upon this question. We are also attaching copy of a supplemental statement which gives the facts as set forth.”

The question to which you direct attention, re-stated, is:

Does the word “skin,” as used in section 1465-68a, 109 O. L. 184, in paragraph 11 of the schedule therein, “Description of disease or injury,” in-