

contract covers the construction and completion of the State Armory Stable at Alliance, Ohio. Said contract calls for an expenditure of twelve thousand dollars (\$12,000.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. The approval of the Controlling Board to the expenditure, although not required under the terms of the special act of the legislature making an appropriation for and providing for the erection of a stable and armory at Alliance (113 O. L. 503), has been obtained. In addition you have submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with. The approval of the Governor, required under the terms of Section 1 of the special act, heretofore mentioned, has been obtained.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2489.

FIREMEN'S INDEMNITY FUND—MUNICIPALITY MAY NOT TERMINATE WHEN NO PROVISION FOR A FIREMEN'S PENSION FUND HAS BEEN MADE—PROVISIONS OF STATUTE MANDATORY.

SYLLABUS:

A municipality not having provided for a firemen's pension fund may not terminate the firemen's indemnity fund created by the mandatory provisions of Section 4647-1, of the General Code.

COLUMBUS, OHIO, October 30, 1930.

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

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

"Section 4647-1 G. C., reads :

'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.'

Sections 4647-3 G. C., and 4647-4, G. C., provide for a levy of taxes for the purposes of the Firemen's Indemnity fund.

Section 5625-13 G. C., paragraph 'd', 113 O. L., page 673, reads :

'Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with Section 5625-9, paragraph (d), (f), or (g) or Section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retire-

ment fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.'

The village of _____ has a volunteer fire department and has created a Firemen's Indemnity Fund and has accumulated a balance of approximately \$2,000, but there have been no obligations incurred which call for the expenditure of any of this fund at the present date or in immediate prospect.

Question 1. May the village council repeal the legislation creating the Firemen's Indemnity Fund, Board of Trustees, etc., and by ordinance provide that the balance of such Indemnity Fund be transferred to the General Fund?

Question 2. If the fund may be so transferred, would members of the volunteer fire department be entitled to compensation from the Workmen's Compensation Fund, in the event they are injured in the performance of duty?

Question 3. If such compensation is payable from the Workmen's Compensation Fund, would the amount thereof be based on earnings in their private capacity or on earnings as volunteer firemen, only?

The compensation paid to such volunteer firemen at the present instance, is five dollars per annum."

In my Opinion No. 2267, issued to you under date of August 29, 1930, it was held as disclosed by the first branch of the syllabus:

"Where a municipal council has passed an ordinance establishing a police relief fund and a board of trustees has been created and no other action has been taken, the council may legally repeal legislation establishing said fund if it chooses to do so."

However, in the above opinion, I had under consideration Section 4616, General Code, which provides that council "may declare the necessity for the establishment and maintenance of the police relief fund." In the case you present, however, the statute makes it mandatory that a firemen's indemnity fund be established in those municipalities having no pension fund and which maintains a fire department supported in whole or in part, at public expense.

In view of the mandatory provision of the section that such a fund be maintained, it is my opinion that a village council is without power to terminate the same, unless, of course, such a municipality had first established a pension fund, which fact it will be assumed does not exist. It would of course follow, that no transfer of said fund could properly be made under Section 5625-13, of the General Code, for the reason that the activity could not be said to have terminated. It is believed that in view of the conclusions hereinbefore reached, it is unnecessary to answer your inquiries more specifically. However, it may be noted that under Section 1465-61, of the General Code, firemen in villages are protected under the Workmen's Compensation Act, irrespective of the existence of other funds. It may be further observed that the Industrial Commission has ruled upon the third question which you present as indicated in the enclosures which you submit and in view of the powers of said commission to determine such matters it is not regarded proper for me to undertake to pass upon the same in the absence of an inquiry from the commission.

Respectfully,

GILBERT BETTMAN,
Attorney General.