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LIMITING THE MEMBERSHIP OF A FIRE COMPANY FOR BENEFIT PURPOSES TO FORTY, APPLIES ONLY TO A "PRIVATE VOLUNTEER FIRE COMPANY"—§§3310.061 (C), 3310.021, 3301.011, R.C.

SYLLABUS:

The provisions of division (C) of Section 3310.061, Revised Code, limiting the membership of a fire company for benefit purposes to forty, applies only to a "private volunteer fire company" as defined in Section 3310.021, Revised Code, and referred to in Section 3310.011, Revised Code; and such limitation does not apply to a fire company which is maintained by, or the members employed by, a political subdivision.

Columbus, Ohio, November 21, 1960

Hon. John G. Peterson, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I have been requested by the Greene County Firemen's Association to secure an opinion from you in regard to the interpretation of Section 3310.061 of the Revised Code of Ohio, and specifically, Sub-section (C), which reads as follows: 'The fire company shall upon the organization of the firemen's dependents

board provide the secretary of such board with a roster of the fire company members, and shall report any later changes in such roster when such changes occur. Only such names as appear on such lists and in no event more than forty names shall be considered as members of the fire company and eligible for benefits under Section 3310.01 to 3310.24, inclusive, of the Revised Code.'

As I understand the method under which township and village fire departments operate in the state of Ohio, there are two, which are:

"(1) A method wherein all equipment, buildings, and manpower is owned and operated by the trustees or council of the political subdivision. Usually, this method of operation is authorized by resolution or ordinance which sets out salaries, duties, etc., necessary to the operation.

"(2) The other method used is by employment of private fire companies operating as non-profit corporations. In this method the private company owns all equipment and operates under contract with the political subdivision.

"We have in Greene County three cases wherein the above cited Section of the Revised Code might seriously hamper operations effecting the safety of many people. We have three fire departments which operate under method number one, cited above; namely, Beaver Creek Township, who maintains only one fire department under one chief, but composed of four fire companies; namely, Alpha, Knollwood, Indian-Riffle and New Germany, each of which said companies have an average of 17 members or a total of 68 members; Xenia Township, which has two stations or companies under one head, north and south, with 25 men in each company or a total of 50; and Bath Township, which has two companies under one head, with 40 men stationed in Fairborn City and 15 men at the Wright View station.

"My questions are as follows:

"(1) Does this section of the Code apply to private fire companies only or does it apply to those departments owned and operated by political subdivisions?

"(2) Does this section of the Code apply to the entire fire department of each subdivision or does the word 'company' mean an individual fire company as a part of the entire fire department?

"I am quite sure from having talked with the men of our County Firemen's Association, that there are other fire departments throughout the state of Ohio who would also be directly effected by this section of the law and we jointly are of the opinion that your prompt attention to this matter would be greatly appreciated by all fire departments."

Section 3310.01, Revised Code, provides in pertinent part:

“* * *

“(B) ‘Volunteer firemen’ means a duly appointed fireman on either a non-pay or part-pay basis, and who is otherwise ineligible to be a member of a firemen’s relief and pension fund or whose employment as a fireman does not in itself qualify him for membership in the public employees’ retirement fund. It shall also include firemen drafted, requisitioned, or appointed to serve in an emergency.

“(c) ‘Members of the fund’ shall mean all political subdivisions, maintaining in whole or in part a volunteer fire department or employing volunteer firemen.”

The cited section was passed by the General Assembly in 1957 (127 Ohio Laws, 949-950). In 1959, Section 3310.011, Revised Code, was enacted (House Bill No. 799). This section extends the definitions of Section 3310.01, *supra*, reading:

“(A) ‘Member of the fund’ as defined in section 3310.01 of the Revised Code, also include *private volunteer fire companies* which have elected to participate in the volunteer firemen’s dependents fund and qualify under sections 3310.011, 3310.021, 3310.031, 3310.041, 3310.051, *3310.061*, 3310.091, and 3310.121 of the Revised Code.

“(B) ‘Volunteer firemen,’ as defined in section 3310.01 of the Revised Code, includes a member of a private volunteer fire company which has elected to participate in the volunteer firemen’s dependents fund under sections 3310.011, 3310.021, 3310.031, 3310.041, 3310.051, *3310.061*, 3310.091, and 3310.121 of the Revised Code.” (Emphasis added)

Also pertinent in the instant question is Section 3310.021, Revised Code, also enacted in 1959, and reading as follows:

“Private volunteer company’ means a company of trained volunteer firemen having a contract to furnish fire protection and emergency service to a political subdivision or fire district.

“A private volunteer fire company which has contracted to afford fire protection to a political subdivision or fire district and whose members do not qualify as ‘volunteer firemen’ under section 3310.01 of the Revised Code, may become a member of the volunteer firemen’s dependents fund created by sections 3310.01 to 3310.24, inclusive, of the Revised Code, if the members of such fire company so elect.”

The practical effect of the adoption of Section 3310.011, *supra*, is self-evident; it provides a method whereby private volunteer fire companies, as defined in Section 3310.021, Revised Code, and members of such companies, can qualify for the benefits of the fund, which until then were available only to volunteer firemen coming within the specific definition of Section 3310.01, *supra*.

Specific provisions for the creation of boards for the administration of dependents funds for private volunteer fire companies, for the election of members of such boards, for procedure, terms of office, etc., are spelled out in detail in Sections 3310.031, 3310.041, 3310.051, and 3310.061, *supra*. All such sections were enacted in 1959, as part of above-mentioned House Bill No. 799.

Section 3310.061, Revised Code, which prompts your inquiry, reads in part:

“* * *

“(C) The fire company shall upon the organization of the firemen’s dependents board provide the secretary of such board with a roster of the fire company members, and shall report any later changes in such roster when such changes occur. Only such names as appear on such list and in no event more than forty names shall be considered as members of the fire company and eligible for benefits under sections 3310.01 to 3310.24, inclusive, of the Revised Code.”

You will note that Section 3310.061, *supra*, is among those which are expressly referred to in subdivisions (A) and (B) of Section 3310.011, *supra*, which deals with private volunteer companies and members of such companies only. It follows, therefore, that the provision in Section 3310.061, (C), *supra*, whereby the eligibility for benefits is limited to forty members of a fire company, is applicable only to private volunteer fire companies, and not to companies maintained by a political subdivision, as in the three situations cited in your letter.

Since the answer indicated in regard to your first question also implies the answer to your second question, a discussion of the latter question is not necessary.

Answering your specific question, therefore, it is my opinion and you are advised that the provision of division (C) of Section 3310.061, Revised Code, limiting the membership of a fire company for benefit

purposes to forty, applies only to a "private volunteer fire company" as defined in Section 3310.021, Revised Code, and referred to in Section 3310.011, Revised Code; and such limitation does not apply to a fire company which is maintained by, or the members employed by, a political sub-division.

Respectfully,
MARK MCELROY
Attorney General