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1. FIREMAN—WIDOW OF VOLUNTEER—ENTITLED TO PAYMENT OF BENEFITS PROVIDED FOR IN SECTION 4647-8 G. C.—DEATH OF HUSBAND— DIRECT AND PROXIMATE RESULT OF EXPOSURE OR INJURY—RECEIVED IN PERFORMANCE OF DUTY INCIDENTAL TO PRIMARY PURPOSES OF FIRE DEPARTMENT.
2. VILLAGE FIRE DEPARTMENT—UNENCUMBERED AND UNEXPENDED BALANCE REMAINING IN ANNUAL OPERATING FUND—END OF FISCAL YEAR— MAY NOT BE RETAINED IN FUND—MUST REVERT TO GENERAL FUND FROM WHICH APPROPRIATED.

SYLLABUS:

1. A widow of a volunteer fireman is entitled to payment of the benefits provided for in Section 4647-8, General Code, when her husband's death is the direct and proximate result of exposure or injury received in the performance of some duty incidental to the primary purpose of a fire department.

2. The unencumbered and unexpended balance remaining in the annual operating fund of a village fire department at the end of the fiscal year may not be retained in such fund but must revert to the general fund from which it was appropriated.

Columbus, Ohio, August 9, 1951

Hon. James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like your opinion on the following questions which have been submitted to me by the Village of Tipp City, Ohio:

“1. Where a firemen's indemnity fund has been established by a village pursuant to Section 4647-1, et seq., General Code, may payment from such fund be made to the widow of a volunteer fireman who died under the following circumstances: On November 27, 1950 J. M., a member of the volunteer fire department of Tipp City was engaged, along with other volunteer firemen, with cleaning snow from and to fire hydrants of the aforesaid village. All the members of the group with whom he was working were volunteer firemen and were only engaged in clean-

ing snow from and to the fire hydrants and in no other task. Each had been paid for three hours worked that day and this payment came out of the firemen's account. Deceased quit work about 10 o'clock P. M. and returned to his home. He died at 10:30 P. M. the same day. Report of Dr. E. G. P., M.D., the examining physician is as follows: "J. M. died at 10:30 P. M. on 11-27-50, as the result of occlusion of a coronary artery of the heart. The chief contributing factor was undoubtedly over-exertion, since the deceased was engaged throughout most of the day and evening in shovelling snow requiring strenuous physical effort to which he was unaccustomed,—and since he had not at any time previously presented any indication of symptoms of heart disease.'

"2. May a balance remaining, at the end of a year, in a firemen's fund of a village be retained in said firemen's fund each year as a fund for the purchase of new fire equipment when such equipment is eventually needed?"

Section 4647-1, et seq., General Code, provide for the establishment, maintenance and disbursement of a firemen's indemnity fund in all municipalities and townships having no firemen's pension fund, but which maintain fire departments in whole or in part at public expense.

By virtue of the provisions of Section 4647-7, General Code, the funds are to be disbursed and paid out only upon the order of the board of trustees of the fund.

Section 4647-8, General Code, specifically defines who shall be beneficiaries and sets forth the standards and procedure to be followed in determining the amount of benefits payable and the conditions under which they are payable.

It has been held by my predecessors that volunteer firemen come within the meaning of Sections 4647-1 to 4647-9, inclusive, General Code, and that a widow and dependent children of a volunteer fireman are entitled to benefits payable under the firemen's indemnity fund. See Opinion No. 5, Opinions of the Attorney General for 1927, page 6, and Opinion No. 2280, Opinions of the Attorney General for 1950. I am in complete accord with these opinions rendered by my predecessors.

Therefore, the widow mentioned in your request is entitled to benefits if she otherwise qualifies as a beneficiary.

In order to answer your specific question, I deem it necessary to con-

sider Section 4647-8, General Code. The pertinent portions of that section read as follows:

“The beneficiaries of any such firemen’s indemnity fund shall be members of the fire department or their dependents who shall be entitled to be paid the amounts following: * * *

To the widow of any fireman killed in the discharge of his duties as fireman, or who died from exposure or injury received while in the discharge of such duty, a sum not to exceed twenty-five dollars (\$25.00) per month, so long as she remains his widow, and the further sum of not to exceed ten dollars (\$10.00) per month for each dependent child under sixteen years of age.”

In the 1950 Attorney General’s opinion, *supra*, my predecessor, in construing this provision, stated:

“It will be noted that this section specifically provides that the dependents of a deceased fireman are to be paid and are entitled to per se the benefits enumerated therein if the fireman is killed while engaged in the performance of his duties as a fireman or if he dies as a result of exposure or injury received while in the discharge of his duties. *That is to say, the only apparent prerequisite to payment under this section is the death of a fireman while engaged in the performance of his duties as a fireman.*”

(Emphasis added.)

It is readily apparent that in rendering his opinion the then Attorney General used language almost identical with the wording of the statute. It is my opinion that this interpretation is correct and that the conditions precedent to receipt of benefits are clearly and definitely expressed not only in the statute, but in the opinion of my predecessor.

Whether or not the volunteer fireman in your factual situation died from exposure or injury received while in the discharge of his duties is a factual question not within the province of this office to determine.

However, I have no hesitancy in reaching the conclusion that he was engaged in the performance of duties incident to his chief duty as a fireman. Manifestly, the primary purpose of a fire department and its firemen is to protect the public and its property against the hazards of fire, and it follows that in order to accomplish such purpose, the fire department must have its equipment in a usable condition. Therefore, in your situation, I am led to the conclusion that the task of shovelling snow to

keep the fire hydrants free and clear from obstruction was one of those incidental duties necessary for the accomplishment of the fire department's primary purpose.

As above mentioned, it is not within my province to decide the ultimate question presented, i. e., whether this particular individual suffered a coronary occlusion as the direct and proximate result of exposure or injury received in shovelling such snow. Therefore, it is my opinion that if the heart attack was directly and proximately caused by undue strain and physical exertion in such shovelling of snow, his death would be "from exposure or injury received while in the discharge of such duty" within the meaning of Section 4647-8, General Code.

The final determination of the issue rests within the discretion of the board of trustees of the fund, and the board is empowered to render a decision based upon a consideration of the evidence.

Referring to your second question I might note that under the authority of Section 439I, General Code, a village council may purchase necessary equipment for the operation and maintenance of its fire department.

You have informed me that the firemen's fund to which you refer is the annual appropriation fund for the yearly maintenance and operation expenses of the fire department. This fund is appropriated from the general fund of the village. I shall, therefore, consider your question upon that basis.

Section 5625-32, General Code, pertains to amending or supplementing appropriation ordinances, transfers from funds and the disposition of unencumbered balances. The statute specifically states:

"* * * At the close of each fiscal year, the unencumbered balance of each appropriation *shall revert* to the respective fund from which it was appropriated and shall be subject to future appropriations; * * *." (Emphasis added.)

The above quoted provision makes it mandatory that balances which are unencumbered and unexpended remaining in funds such as the one in question revert to the respective fund from which it was appropriated.

Accordingly, in specific answer to your inquiry, I am of the opinion that:

1. A widow of a volunteer fireman is entitled to payment of the benefits provided for in Section 4647-8, General Code, when her husband's death is the direct and proximate result of exposure or injury received in the performance of some duty incidental to the primary purpose of a fire department.

2. The unencumbered and unexpended balance remaining in the annual operating fund of a village fire department at the end of the fiscal year may not be retained in such fund but must revert to the general fund from which it was appropriated.

Respectfully,

C. WILLIAM O'NEILL
Attorney General