

**OPINION
68-353**

February 6, 1968 (OPINION)

Mrs. Agnes Geelan

Chairman

Workmen's Compensation Bureau

RE: Workmens Compensation - Merit Rating System - Volunteer Firemen

This is in response to your letter in which you state the following:

Section 65-06-04 sets out the method of ascertaining premium for volunteer firemen. Section 65-04-17 allows the bureau to establish a merit rating system. Would you please give your opinion as to whether or not section 65-06-04 precludes the bureau from applying the merit rating system allowed in section 65-04-17 with respect to the firemen coming under chapter 65-06 of the North Dakota Century Code."

Section 65-04-17 as found in chapter 65-04 of the North Dakota Century Code pertains to premiums which are based upon payroll and wages. This same chapter also pertains to the collection of premiums and other related matters, whereas section 65-06-04 as found under chapter 65-06 concerns itself only with volunteer firemen and civil defense personnel. The premium in this instance is based upon population rather than payroll or wages. While these factors are not in themselves controlling or dispositive of the question, nevertheless if taken together with the underscored language in the following cited section, they are indicative of what is intended by the provisions of section 65-06-04, which provides as follows:

ASSESSMENT OF PREMIUMS. For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firemen and volunteer civil defense trainees, the bureau shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out the provisions of this chapter, and shall fix the annual charges and assessments which shall be made against municipalities employing volunteer firemen and volunteer civil defense trainees. Such charge shall be a fixed sum for each one hundred of the population of the municipality involved, the same to be uniform as to all such municipalities but in proportion to the population thereof. The bureau may establish a minimum charge or assessment to be applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds of the population thereof would amount to less than the amount of such minimum charge or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later." (Emphasis supplied.)

Where the bureau is required to fix the sum (premium) for each one hundred of the population, it is difficult to employ a merit rating

program because the merit rating program would modify the premium which would no longer be fixed. The main problem would be where a penalty or demerit would be added, in which instance the municipality would be paying a higher rate than the fixed sum established by the bureau on a per hundred basis. In this respect, in examining the provisions of section 65-04-01, which pertains to setting premiums for different classifications, it is noted that the legislature did not use comparable language as found in section 65-06-04, especially as to the fixed sum or the fixed rate.

In considering the entire provisions of chapter 65-06, it becomes apparent that the legislature considered all of the volunteer firemen as a special group which should bear the cost of the program. It is further observed that it is extremely difficult to employ a merit or demerit rating system and still conform to the specific provisions of section 65-06-04. For these reasons it is our opinion that section 65-04-17 relating to a merit and demerit rating system is not applicable to the premiums assessed under section 65-06-04. However, if appropriate legislation is enacted which will clarify how the merit rating system may be employed and yet keep the program on a financially sound basis, then section 65-04-17 could be made applicable.

HELGI JOHANNESON

Attorney General