

**OPINION
46-102**

April 13, 1946 (OPINION)

FIREMEN'S ASSOCIATIONS

RE: Widows Entitled to Pension

This will acknowledge the receipt of your letter of April 9, 1946, with respect to the application of the Firemen's Pension Law under the provisions of chapter 18-05 of the revised Code to the widows and minor children of deceased disabled firemen. In your letter you say:

There seems to be some confusion in the minds of the people in charge of the Relief Association and the Pension Fund as to there being a distinction between a man on a disability pension and a man on the permanent service pension who has served his required time and granted a pension under Section 18-0506, in that it is their opinion that in the event of death of a fireman on a permanent service pension, his widow and minor children would be eligible to a pension, while the widow and minor children of a man who is drawing a disability pension would not be eligible, in the event of his death."

Section 18-0510 of the Revised Code specifically provides that the qualifications as to age and term of service prescribed by section 18-0506 shall not be applicable to a fireman pensioned for disability. Said section reads as follows:

The qualifications as to age and term of service prescribed by this chapter shall not apply to a member of a fire department who makes an application for a pension on account of injuries or disabilities which unfit him for the duties of an active fireman. The relief association shall pay the pension to such members, or to the widows or orphans of a deceased fireman, in such amounts and under such limitations and conditions as its articles of incorporation and by-laws shall provide and permit. No pension paid to any one family, however, shall exceed the maximum monthly service pension permitted under this chapter."

I agree with your conclusion that there is no distinction between the rights of widows and orphans of a deceased fireman who retired after the statutory period of service and the rights of widows and orphans of a deceased fireman who was granted a disability pension. It is my opinion that if the provisions of chapter 18-05 were susceptible of a contrary construction, which I am unable to see, public policy would require a liberal construction in order to promote the welfare of dependents of disabled firemen.

I can find no basis in the provisions of chapter 18-05 for so constructing the firemen's pension law that a pension granted to a fireman because of disability terminates upon his death and that his widow or orphans are not eligible for such pension. In my opinion section 18-0505 of said chapter expresses the intent and purpose of the law. Subsection 2 of section 18-0505 specifically provides that "the money received by the treasurer of a firemen's relief

association from the state shall be disbursed for pensions to and the relief of sick, injured, and disabled members of any fire department in the municipality and their widows and orphans;"

The relief association by its articles of incorporation and by-laws determines the amounts and under what limitations and conditions pensions shall be paid to disabled firemen. But when a pension has been granted, it is my opinion that his widow or orphans are entitled to receive the pension after his death.

NELS G. JOHNSON

Attorney General