

carrying vehicles with weights, heights and lengths in excess of the maximum limits prescribed by Section 47-530 of Burns' 1940 Replacement, as amended by Chapter 205 of the Acts of 1947, may only be operated upon the highways of this state under permits issued by the State Highway Commission of Indiana pursuant to the provisions of Section 47-538 of Burns' 1940 Replacement.

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OFFICIAL OPINION NO. 13

April 16, 1947.

Hon. John D. Pearson,  
Commissioner of Insurance,  
State House,  
Indianapolis, Indiana.

Dear Mr. Pearson:

I have before me your letter of recent date in which you request an official opinion upon the following question:

“Reference is had to Chapter 196, Acts of the General Assembly, 1941. May we respectfully request an opinion as to the provisions of said chapter and whether they apply where the volunteer fire department is not a governmental unit but organized and financed by volunteer subscription and incorporated as a rural fire department, to purchase fire fighting equipment to be used exclusively within the confines of the township.”

Chapter 196 of the Acts of 1941, page 596, amends certain sections of Chapter 163 of the Acts of 1939, page 749, and both statutes must be considered together to answer your question. They are contained in Burns' 1933 (1945 Pocket Supp.) Sections 48-6161 to 48-6166, both inclusive. The 1939 Act, as amended in 1941, provides for certain tax exemptions for active volunteer firemen and makes it mandatory for any city, town or township of this state having a volunteer fire company or companies to procure insurance for the benefit of the members thereof. Your specific ques-

tion is directed to the matter of procuring insurance for the members of such volunteer fire companies.

Section 3 of the 1939 Act as amended by Section 1 of the 1941 Act (Burns' 1933 (Pocket Supp.) Section 48-6163) provides as follows:

“Any city, town or township of this state having a volunteer fire company or volunteer fire companies, at the time of the passage of this act, or in which a volunteer fire company or volunteer fire companies shall hereafter be organized, shall procure, in the name of and for the benefit of each member of such volunteer fire company or volunteer fire companies, a policy or policies of insurance, conditioned as hereinafter provided.”

Section 4 of the 1939 Act (Burns' 1933, Section 48-6164) states that each policy of insurance shall provide for the payment to any member of any such volunteer fire company, who shall meet with an accident arising out of his duties as such fireman causing disability preventing him from pursuing his usual vocation, of a weekly indemnity of not less than \$25.00, the expenses of an attending physician and such surgical, hospital and nurse services and supplies as may be necessary for the first thirty days after such injury or disability: such weekly payments to continue as long as such disability continues, but the aggregate amount not to exceed \$1,500.00. In case of death not less than \$3,500.00 shall be paid to the dependents of any such volunteer fireman in case his death was caused by an accident or injury received while acting as such volunteer fireman: such policies of insurance to also provide for the payment of not less than \$3,500.00 to such volunteer fireman if he becomes totally disabled by an accident arising out of the performance of his duties as such volunteer fireman.

The term “volunteer fire company” is defined in Section 2 of the 1941 Act (Burns' 1933, Section 48-6165) as follows:

“The term ‘volunteer fire company’ means any company organized for the purpose of answering fire alarms and extinguishing fires, the members of which receive either no compensation or nominal compen-

sation for their services thus rendered. If one or more members of any such volunteer fire company shall be paid compensation in any amount not in excess of the amount hereafter set out by any such city, town or township, or if such city, town or township shall provide for the payment of a nominal prescribed amount of compensation per annum to any one or more members of such volunteer fire company, or a prescribed amount for each fire which any such fireman assists in extinguishing, or for each call to which any such fireman responds, such fire company shall be deemed to be a volunteer fire company as contemplated in this act, notwithstanding the payment of any such compensation, and each and every member of such fire company who serves either without compensation or for nominal compensation, shall be entitled to avail himself of the provisions of this act.”

Also, Section 6 of the 1939 Act (Burns' 1933, Section 48-6166) provides that all expenses incurred for premiums of such insurance policies shall be paid out of the general fund of such city, town or township.

If the foregoing sections of the statute were given their broadest construction, it would appear that any member of a volunteer fire company in a township would be entitled to be covered by insurance which the township trustee would have to procure regardless of whether his services or the services of the volunteer fire company were actually needed or requested by the township trustee, and regardless of whether the township trustee had approved such volunteer fire company as a regular fire company to fight fires for the benefit of the people of the township. Under such a construction the township trustee would have to pay for the premiums of such insurance out of the general township fund regardless of the necessity for the operation of such volunteer fire companies. Such a construction would be contrary to our generally established principles of law that public funds may only be expended where they are expressly authorized by statute or are necessary to be expended to carry out the duties of officers imposed by law.

A more reasonable construction of the foregoing sections of the statute in question may be found by reading these sections with the other sections of such statute. It is a well established principle of statutory construction that in order to determine the legislative intent the statute or statutes on the same subject matter should be construed as a whole and the different sections read together and harmonized. (*Hargis v. State* (1942), 220 Ind. 429).

As heretofore mentioned, Sections 1 and 2 of the 1939 Act (Burns' 1933, Sections 48-6161 and 48-6162) provide for a tax exemption for any active volunteer fireman who was a member of any regularly organized fire company of any city, town or township. The term "active volunteer fireman" is defined in Section 2 of the 1941 Act (Burns' 1933, Section 48-6165) as follows:

"The term 'active volunteer fireman' as used in this act means a fireman who of his own free will has volunteered to assist either without compensation or for nominal compensation, in fighting all fires occurring within the corporate limits of the city or town or township of which he is a resident; who shall have made application in writing for membership in the volunteer fire company of the city, town or township of which he is a resident, and who by virtue of such application shall have been elected or appointed to membership in such volunteer fire company and whose name shall have been entered on a roster of volunteer firemen which shall be kept by such volunteer fire company, and which shall have been approved by the proper municipal officers of such city, town or township, and who at the time of his election or appointment shall have taken and signed a pledge to comply with all orders that may be given by the chief, assistant chief or other officer in charge of such volunteer fire company, relative to any matter pertaining to the work of such volunteer fire company."

From the foregoing section of the statute it is clear that the tax exemption is granted only to those active volunteer firemen who have volunteered to fight all fires occurring within the corporate limits of the city, town or township

and who have been elected to membership in a volunteer fire company which has been approved by the proper municipal officers of any city, town or township, and who have signed a pledge to comply with all orders that may be given by the chief or other officer in charge of such volunteer fire company. In my opinion those same requirements should be read into the remaining sections of the Act mandating the municipal officers or township trustee to provide insurance for the members of such companies. If this is done, then it is apparent that such volunteer fire companies and the members thereof must be approved by the municipal officers or township trustee for the purpose of fighting all fires in the township, and would be consistent with the other provisions of the statute requiring the municipal officers or township trustee to carry such insurance provided for in the statute for the protection of the members of such volunteer fire companies.

Also, I call your attention to Section 1 of Chapter 130 of the Acts of 1945, page 276 (Burns' 1943 Repl. Section 65-511 (1945 Pocket Supp.)) which authorizes the township trustee with the consent of the township advisory board to enter into an agreement with volunteer fire companies which maintain fire fighting service for the use and operation of fire fighting apparatus and equipment owned by such companies or associations and for the service of the operators of such apparatus and equipment as shall best conduce to the saving from destruction by fire of the property of cities of such township and of the public property therein situated. In a case of this kind it would also appear to be proper for the township trustee to carry the insurance provided for in Sections 48-6161 to 48-6166, above discussed.

Based upon the foregoing reasons and authorities, it is, therefore, my opinion that whether the provisions of Burns' 1933, Sections 48-6161 to 48-6166, both inclusive, apply to a rural fire department and its members depends upon whether it and its members have been approved by the township officer or officers under the provisions of Burns' 1933, Section 48-6165, or with which the township trustee has contracted under the provisions of Burns' 1933, Section 65-511, above discussed, or pursuant to similar statutes under which said

township officials are authorized to and have officially recognized said fire companies as a part of the township fire department.

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OFFICIAL OPINION NO. 14

April 17, 1947.

Hon. C. E. Ruston, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 10, 1947 which reads as follows:

“It has come to our attention that some counties in the state of Indiana insist that all officials and employees of the county be included in the policies of insurance written under the workmen’s compensation act.

“It is our understanding that this insurance applies only to employees as distinguished from officers and any expenditure of public funds to include such public officers under the insurance coverage would be illegal.

“We are now confronted with an endorsement which is made a part of the policy which the county purchases and which covers both employees and officers under the provisions of the workmen’s compensation law.

“Will you kindly give us your official opinion upon the following questions.

“Does an endorsement to a policy written under the workmen’s compensation act which endorsement provides that both employees and officials shall be covered under such policy be a valid contract as to such endorsement.”