

of inmates committed to your institution, provides in part as follows:

“The expense of clothing the patient, if not paid by himself or his relatives or friends, shall be paid by the county; and if furnished by the institution, shall be collected from the county, as now provided in the case of insane patients in the hospitals for the insane. The traveling or incidental expenses of the patient, and also the officer or person in charge of said patient, to and from said institution, shall be paid by the county.

* * *”

From a consideration of the foregoing statutes it is my opinion that where the Board of Trustees of your institution is charged with the care, custody, control and discipline of the inmates, and where a boy escapes from said institution and is taken in custody by a sheriff of one of the counties of this State, that it is your duty to request the return of said boy to the custody of your institution. If this boy is returned under such circumstances by the sheriff he would be entitled to the mileage fee specified in Chapter 49-1315 Burns, *supra*.

OFFICIAL OPINION NO. 3

January 12, 1945.

Mr. Otto K. Jensen, State Examiner,
 Department of Inspection and Supervision
 of Public Offices,
 State House,
 Indianapolis 4, Indiana.

Dear Mr. Jensen:

Your letter of December 22, 1944, has been received, requesting an official opinion on the following question:

“This department has been asked whether a member of the firemen’s pension fund of a city is entitled to receive the benefits of such fund if during the time when off duty as a fireman he engages in work or employment not in line with his duties as such fireman

and during and as a result of such work or employment he is injured by accident or otherwise so as to be physically or mentally disabled and to render necessary his retirement from all service on such fire force.”

The Firemen's Pension Fund was created by Chapter 129, Acts 1905, same being 48-6501 *et seq.* Burns' (1933), as applied to cities of the first, second, third, fourth and fifth classes. Section 187 of said acts, as amended, being Sec. 48-6506 Burns' (1933) provides in part as follows:

“If any member of the said fire force shall, while in the performance of his duty, become, or be found, upon examination, by a medical officer, ordered by the chief of the fire force, to be physically or mentally disabled, so as to render necessary his retirement from all service on the force, such chief shall retire such disabled person, and the board of trustees shall authorize the payment to such person, monthly, from the pension fund, the sum provided in the next section.”

Chapter 31 of the Acts of 1937, same being section 48-6518 *et seq.* Burns' (1943) Supp., creates a Firemen's Pension Fund in every city having a population of 114,500 or more which maintains a regularly organized and paid fire department. Said Act further applies to cities of less population whose common council by ordinance elects to come within the provisions of said statute. Section 10 of the last mentioned statute, same being Sec. 48-6527 Burns' (1943) Supp., provides in part as follows:

“If any member of the fire force of any such city shall become or be found, upon examination, by a medical officer, to be physically or mentally disabled, so as to render necessary his retirement from all service on the force, the chief of the fire force shall retire such disabled person, and the board of trustee shall authorize the payment to such person, monthly, from the pension fund the sum prescribed in section eleven (Sec. 48-6528) of this act.”

In the case of Board of Trustees, etc. v. State *ex rel.* Hyatt *et al.* (1943), 221 Ind. 110, in sustaining a writ of mandate

issued against the City of South Bend requiring said City to recognize the appellees as members of the fire force of such city and entitled to the benefits of the Firemen's Pension Fund, the court, on page 116 of the opinion, said:

"The complaint failed to show that all of the appellees spent their entire time in the service of the fire department. The act did not expressly require that an employee spend his entire time in the service of the fire department in order to be eligible to participate in the pension fund, nor do we see any basis for saying that such a requirement may be implied. The assessment against each member's salary is the same, an amount 'equal to three per centum per annum of the salary of a fully paid first class fireman.' Sec. 8 of the 1937 Act, *supra*. The fact that an individual did not spend all of his time in the service of the fire force or did not draw a full salary could not affect the amount of his assessment for the fund."

It is clear from the provisions of the above statutes a person is not required to be exclusively employed as a fireman in order to be a member of said Pension Fund. There is no provision in said statutes requiring disability to be the result of such employment as a fireman. The right to participate in such Pension Fund results from the fact such person is a fireman, has successfully passed the requirements of the statutes as to examination, etc., and been admitted as a member of such Fund and has paid the amount of required assessments toward the maintenance of such fund.

It is, therefore, my opinion a member of the Firemen's Pension Fund of the City is entitled to receive the benefits of such Fund even though his disability results from injury received in employment not in line with his duties as such fireman.