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ATTORNEY GENERAL

February 8, 1979

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ARIZONA ATTORNEY GENERAL

John R. Neubauer
Deputy Pima County Attorney
111 West Congress
Tucson, Arizona 85701

Re: I79-041 (R78-20)

Dear Mr. Neubauer:

You have requested an answer to the following question:

When is a legally-organized volunteer fire district organized pursuant to A.R.S. § 9-1001 et seq. entitled to participate in the Firemen's Relief and Pension Fund as provided by A.R.S. § 9-951 et seq.?

In order to answer this question, it is necessary to determine whether a "volunteer fire district" upon being organized and without more is synonymous with a "fire company" under § 9-951 et seq. since under §§ 9-951 et seq. only "volunteer fire companies" are authorized to operate a Firemen's Relief and Pension Fund.

A close reading of A.R.S. § 9-951 et seq. indicates that the term "fire company" as used in those statutes has a specific meaning in relation to pension funds: a fire company must be an operating company employing potential beneficiaries in order to operate a pension fund.

A public pension is a stated allowance paid to an individual or his representative for valuable service rendered or for loss or damage sustained by such individual in public service. Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965). A pension fund, then, presupposes the existence of beneficiaries to receive its benefits.

A.R.S. §§ 9-951 et seq. provide for the establishment, maintenance and disbursement of a pension fund for firemen.

A.R.S. § 9-951 reads in part as follows:

B. The department of insurance shall embody in the annual statement required under the provisions of §§ 20-223 and 20-224 a blank form containing the names of incorporated cities and towns and legally organized fire companies, entitled to share in the tax proceeds, and shall require fire insurance companies to report, at the time of making annual statements, the amount of premiums received during the year ending December 31 on insured properties located in incorporated cities and towns and areas served by legally organized fire companies, as named in the blank form.

C. Not later than April 30 following the filing of the report, the department of insurance shall certify to the state treasurer the incorporated cities and towns having organized fire departments and the areas served by legally organized fire companies, the respective amounts of premiums received by fire insurance companies for insurance upon properties located in each incorporated city and town and in each area served by a legally organized fire company, and the amount of tax paid for the preceding year by the fire insurance companies upon such premiums. The department of insurance at the same time shall certify to the state treasurer the amount of premiums received by fire insurance companies for all insurance written in areas other than incorporated cities and towns or areas served by legally organized fire departments and the amount of tax paid for the preceding year by fire insurance companies upon such premiums, and that amount of the tax proceeds shall then be prorated among the several incorporated cities and towns and legally organized fire companies in proportion to the amount of the fire insurance tax collected from insurance on property therein.

D. Each incorporated city or town and each legally organized volunteer fire company shall deduct five per cent from the salaries or compensation of its firemen and add a like amount from its general revenues. The total of the two amounts shall be paid each month into the firemen's pension and relief fund. The treasurer of each board shall keep a record of the salary deductions. If a fireman dies under circumstances not entitling his dependents to a benefit from the firemen's relief and pension fund, or if he becomes separated from the service voluntarily or involuntarily without having become eligible to retirement benefits thereunder, all deductions theretofore made from his salary under this article shall become payable, without interest, to his beneficiary in the event of his death, or otherwise to the fireman.

(Emphasis added.)

Sections B and C above provide that "legally organized fire companies" are entitled to receive a portion of fire insurance tax proceeds to fund a pension plan.

Under Section D, each legally organized volunteer fire company must deduct 5% from the salaries of its firemen to be paid into the fund. This language indicates that a legally organized fire company within the meaning of A.R.S. § 9-951 must be an entity that has firemen in its own employ who would be eligible for benefits.

This interpretation of "volunteer fire company" is reinforced by other provisions. For example, A.R.S. § 9-954, which establishes the board of trustees for the fund, provides as follows:

A. The mayor and clerk of every incorporated city or town, or the chairman and clerk of the board of supervisors in the case of legally organized volunteer fire companies in unincorporated towns or settlements, together with the chief and four members elected from the fire department or from the volunteer fire company, as the case may be, shall constitute the board of trustees of the firemen's relief

and pension fund for that incorporated city or town or volunteer fire company. The board of trustees shall provide for the disbursement of the fund and designate the beneficiaries thereof as directed in this article.

(Emphasis added.)

B. The fire department of each incorporated city or town and each volunteer fire company shall elect by ballot from its membership four members of the board of trustees, or number of members as, when added to the incumbent members thereof, will constitute four members in addition to the chief. If two members in addition to the chief are already on the board of trustees, two additional members shall be elected to hold office for the same respective terms as the two incumbent members. At the expiration of the two shorter terms, and thereafter biennially, two members shall be elected for terms of four years each.

Composition of the board includes four members of the volunteer fire company. Additionally, the board must designate beneficiaries of the fund. Both requirements make it necessary for a volunteer fire company to have its own firemen in order to be eligible to participate in a pension fund.

A.R.S. §§ 9-958 through 9-967 provide for the disbursement of pension funds. They establish guidelines both for eligibility and for rates of payment to those who have served a requisite number of years or have become disabled or died during service. A.R.S. § 9-967¹ specifically entitles members of volunteer fire companies to a fixed-rate pension,

1. A.R.S. § 9-967 provides:

A. Notwithstanding any other provisions of this article to the contrary, a person duly appointed and having served either as a member of a legally organized volunteer fire company or as a volunteer member of a fire department of any incorporated city or town without pay, or without full pay and on a part-time basis, for twenty-five years or more, or who has reached sixty years of age, and served twenty years or more, may, at the discretion of the board of trustees, be paid a monthly pension not to exceed one hundred and fifty dollars

paid from the fund of his company. Persons serving in volunteer fire companies are included within all the pension-granting provisions, reinforcing the requirement that a volunteer fire company must have potential beneficiaries to be included in the scope of A.R.S. § 9-951 et seq.

A.R.S. §§ 9-1001 et seq. provide for the establishment and operation of a fire district within an unincorporated area. A.R.S. § 9-1001.A sets out the procedure for organization of a fire district:

A. When a petition defining boundaries of an unincorporated town, or two or more adjoining or adjacent unincorporated towns or settlements is filed with the clerk of the board of supervisors of the county, signed and certified under oath by three or more qualified electors residing therein stating that on their information and belief the petition contains the signatures of ten per cent of the qualified electors residing within the boundaries of the proposed district and praying that they be permitted to organize either a volunteer fire district administered by a chief or a

Footnote 1., page 4 (continued):

per month which shall be paid from the firemen's relief and pension fund of his volunteer fire company or fire department. Such pension if paid may be increased or decreased in amount, or discontinued at the discretion of the board of trustees.

B. At the discretion of the board of trustees, all retired members collecting a pension pursuant to subsection A on the effective date of this subsection may have such pension raised to not more than one hundred and fifty dollars per month. Such pension may also be increased or decreased in amount, or discontinued at the discretion of the board of trustees.

C. If the funds provided in the volunteer firemen's relief and pension fund are insufficient to pay fully the pensions authorized pursuant to this section, the fund shall be prorated among those entitled thereto.

volunteer fire district administered by a district board, as such petition shall specify, therein, the board shall make an order calling an election within such boundaries to decide whether or not such volunteer fire district shall be organized and maintained therein. The order shall not be entered by the board until the petitioners have deposited with the board sufficient money, not exceeding four hundred dollars, to defray the expenses of the election, which shall be paid out on the order of the board. If a volunteer fire district is organized as hereinafter specified, the depositors of the money shall be reimbursed from the volunteer fire fund provided for hereinafter.

(Emphasis added.)

A fire district establishes boundaries of an unincorporated area for the purpose of fire protection. It may be administered by a chief or a district board. A volunteer fire district fund is provided pursuant to A.R.S. § 9-1005 from taxes on property within the boundaries of the territory constituting a volunteer fire district.

The responsibilities of a fire district are detailed in A.R.S. § 9-1004. They include the following:

A. The officers of the district shall hold regular monthly meetings and may:

1. With the approval of the board of supervisors:

(a) Purchase, lease or lease-purchase apparatus and purchase water for fire protection and preservation of life.

(b) Purchase, lease or lease-purchase rescue equipment consisting of, among other things a resuscitator and a vehicle to be used as an ambulance in case of emergency for protection of lives.

(c) Employ help necessary for fire protection and preservation of life.

(d) Lease or purchase land, erect or purchase buildings and equipment and furnish such buildings so as to house equipment and personnel necessary for fire protection.

(e) Assist the state fire marshal in the enforcement within the territory of the district of fire prevention standards of the state.

* * *

2. By a majority vote of its members, authorize its chief or if there is a district board, the chairman of such board to enter into an agreement for procuring the services of an organized private fire department or a fire department of a neighboring city, town or settlement without impairing its powers granted.

(Emphasis added.)

The fact that a district may employ help for fire protection creates a distinction between a fire district and a fire company for purposes of A.R.S. § 9-951. A fire district with its own employees is a fire company for purposes of § 9-951; however, a fire district that secures the services of an outside fire department, in our view, would not be a fire company for purposes of §§ 9-951 et seq.

Under rules of statutory construction, statutes dealing with the same subject matter must be read together and meaning given to each statute. Campbell v. Superior Court, 18 Ariz. App. 287, 501 P.2d 463 (1972). It is our opinion that a volunteer fire district and a volunteer fire company are not synonymous. This view is supported by the fact that A.R.S. §§ 9-1001 et seq. were amended in 1975² by substituting the word "district" or "company" in all provisions except A.R.S. § 9-1007.02, whereas the word "company" was continued in use throughout A.R.S. §§ 9-951 et seq.

2. Ariz. Sess. Laws 1975, Ch. 134.

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A.R.S. § 9-951 sets aside appropriate monies for the firemen's relief and pension fund to be distributed to legally organized fire companies. A volunteer fire district is not per se a company entitled to receive monies for a pension fund. It is permissible to look to the context of a statute, the language used, the subject matter, the effects and consequences and the spirit and purpose of the law to glean legislative intent. Sellinger v. Freeway Mobile Home Sales, Inc., 110 Ariz. 573, 521 P.2d 1119 (1974). To allow a district which has not employed a company of volunteer firemen to operate a pension fund would be inconsistent with the intent of the statutes establishing the pension fund to compensate those who have protected the public.

We are aware that Atty.Gen.Op.No. 74-21-L (September 17, 1974) appears to stand for the proposition that a legally organized volunteer fire district is ipso facto a legally organized volunteer fire company authorized to receive a pro rata amount of fire insurance premium taxes. That opinion was issued prior to the enactment of Ariz.Sess. Laws 1975, Ch. 134 which discontinued the use of the term "volunteer fire company" when a volunteer fire district was intended. Our earlier opinion also failed to consider that the purpose of the premium tax was to provide a portion of the money, in addition to employer and employee contributions, to operate a pension and relief fund for the firefighting employees of a volunteer fire district. Atty.Gen.Op.No. 74-21-L, to the extent that it is inconsistent with this opinion, is disapproved.

Sincerely,



BOB CORBIN
Attorney General

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