

Mr. Philip Wagner, Executive Secretary
Employees Retirement System

(continued)

the claimed injury, and was dismissed from the service of the City on October 26, 1961.

The pertinent provision of the Pension Ordinance is as follows:

"Upon application of a member, or of the head of his department, any member who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring /sic/ while in the actual performance of duty at some definite time and place, without wilful negligence on his part, shall be retired by the Board of Trustees, provided that the medical board shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired." (Sec. 6(5) of Pension Ordinance, page 18)

It is our opinion that an accident, to be compensable under this section, must occur to a "member" of the System, and inasmuch as Mr. Meyers was not a member at the time of the alleged accident, his application should be denied.

If you have any further questions, do not hesitate to call.

Very truly yours,

/s/ HARRISON L. WINTER
City Solicitor

/s/ BLANCHE G. WAHL
Assistant City Solicitor

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