

# COMPLIANCE AUDIT

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## Emaus Firemen's Relief Association, Inc. Lehigh County, Pennsylvania For the Period January 1, 2017 to December 31, 2018

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August 2019



Commonwealth of Pennsylvania  
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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**EUGENE A. DePASQUALE  
AUDITOR GENERAL**

Mr. Donald Riley, Jr., President  
Emaus Firemen's Relief Association, Inc.  
Lehigh County

We have conducted a compliance audit of the Emaus Firemen's Relief Association, Inc. (relief association) pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania, Section 403 of The Fiscal Code, Act of April 9, 1929, (P.L. 343, No. 176), and mandated by the Volunteer Firefighters' Relief Association Act, as consolidated by the Act of November 23, 2010 (P.L. 1181, No. 118), at 35 Pa.C.S. § 7411 *et seq.*, for the period January 1, 2017 to December 31, 2018.

The objective of the audit was to determine if the relief association complied with applicable state laws, contracts, bylaws, and administrative procedures as they relate to the receipt of state aid and the expenditure of relief association funds. Our audit was limited to the areas related to the objective identified above and was not required to be and was not conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

Relief association officers are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the relief association's administration of state aid and accumulated relief funds complies with applicable state laws, contracts, bylaws, and administrative procedures, including the safeguarding of assets. Relief association officers are responsible for complying with applicable state laws, contracts, bylaws, and administrative procedures. It is our responsibility to perform procedures to obtain sufficient, appropriate evidence to the extent necessary to satisfy the audit objective. We believe that our audit provides a reasonable basis for our conclusions.

We were not able to obtain an independent confirmation of a portion of the cash balance directly from the financial institution. Therefore, while the relief association provided bank statements that indicated that, as of December 31, 2018, the relief association had a cash balance of \$35,368, we were not able to verify a portion of this cash balance.

Based on our audit procedures, we conclude that, because of the significance of the matter described in the finding below and discussed later in this report and the effects, if any, of the matter described in the preceding paragraph, the relief association did not, in all significant respects, comply with applicable state laws, contracts, bylaws, and administrative procedures as they relate to the receipt of state aid and the expenditure of relief association funds, collectively as a whole, for the period January 1, 2017 to December 31, 2018. Therefore, the relief association may be subject to the potential withholding of its future state aid distribution, as discussed in the Potential Withhold of State Aid section of this report.

Finding – Receipt Of State Aid In Excess Of Entitlement

The supplementary financial information contained in this report is presented for purposes of additional disclosure and analysis. We performed only limited procedures on the supplementary financial information and, accordingly, express no form of assurance on it.

The contents of this report were discussed with the management of the relief association and, where appropriate, their response has been included in the report. We would like to thank the relief association officials for the cooperation extended to us during the conduct of the audit.

August 8, 2019



EUGENE A. DEPASQUALE  
Auditor General

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## BACKGROUND

Pursuant to Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania, Section 403 of The Fiscal Code, Act of April 9, 1929, (P.L. 343, No. 176), and the Volunteer Firefighters' Relief Association Act, as consolidated by the Act of November 23, 2010, (P.L. 1181, No. 118), at 35 Pa.C.S. § 7411 *et seq.*, the Department of the Auditor General's duty is to audit the accounts and records of every volunteer firefighters' relief association to determine that funds received under the Foreign Fire Insurance Tax Distribution Law, Act of December 18, 1984, (P.L. 1005, No. 205), as amended, 53 P.S. § 895.701 *et seq.* (commonly referred to as Act 205), are properly expended.

The relief association is a charitable organization that was formed primarily to afford financial protection to volunteer firefighters and to encourage individuals to participate in volunteer fire service.

Act 118 governs the overall operation of volunteer firefighters' relief associations. Relief association bylaws define the specific operational procedures by which relief associations conduct business. To fulfill its primary purpose, Act 118 authorizes specific types of expenditures and prescribes appropriate volunteer firefighters' relief association investment options. Within the parameters established by Act 118, it is the responsibility of relief associations to choose investments in a proper and prudent manner.

Volunteer firefighters' relief associations receive public tax monies, and the association officers therefore have a responsibility to the public to conduct the association's financial affairs in a businesslike manner and to maintain sufficient financial records to support the propriety of all association transactions. Volunteer firefighters' relief association officers are also responsible for ensuring that the association operates in accordance with applicable state laws, contracts, bylaws and administrative procedures.

Act 205 sets forth the computation of the Foreign Fire Insurance Tax Distribution paid to each applicable municipality throughout the Commonwealth of Pennsylvania. The amount of the distribution is based upon the population of each municipality and the market value of real estate within the municipality. Upon receipt of this distribution, the municipality must allocate the funds to the volunteer firefighters' relief association of the fire service organization or fire service organizations that is or are recognized as providing the service to the municipality.

**BACKGROUND – (Continued)**

The relief association was allocated state aid from the following municipality:

<u>Municipality</u>	<u>County</u>	<u>2017</u>	<u>2018</u>
Emmaus Borough*	Lehigh	\$65,910	\$22,783

\* Emmaus Borough provided inaccurate percentages for paid protection versus volunteer protection on the Certification Form AG 385, for the years 2017 and 2018, which are used in the determination of the foreign fire insurance premium tax allowable to the municipality, per Section 706(b)(2) of the Act of December 18, 1984, (P.L. 1005, No. 205) as further disclosed in the Finding in this report. In addition, due to a decision made by Emmaus Borough regarding the outcome of a lawsuit with the Pennsylvania Labor Relations Board which resulted in a portion of the active volunteer firefighters being recognized as paid firefighters, the borough subsequently placed the state aid received for 2017 and 2018 into escrow and did not forward the funds to the relief association until July of 2019. Consequently, the relief association did not receive their foreign fire tax allocation for the years 2017 and 2018 from this municipality in a timely manner, and those funds were thus not available to the relief association for general operating expenses or for investment purposes. Upon receipt of the state aid allocations, the relief association deposited the funds on July 17, 2019, into a relief association account.

Emmaus Borough is still required to submit a Receipt And Distribution Of Foreign Fire Insurance Premium Tax Form 706-B for the years 2017 and 2018 to this Department as soon as possible.

The volunteer firefighters’ relief association and the affiliated fire service organization are separate, legal entities. The relief association is affiliated with the following fire service organization:

Emmaus Fire Department

EMAUS FIREMEN’S RELIEF ASSOCIATION, INC.  
FINDING AND RECOMMENDATION

**Finding – Receipt Of State Aid In Excess Of Entitlement**

**Condition:** The relief association received excess state aid allocations for the years 2017 and 2018 from Emmaus Borough totaling \$46,379, as illustrated below:

	<u>2017</u>	<u>2018</u>
State aid allocation issued	\$ 65,910	\$ 22,783
Borough’s reported volunteer protection percentage	100%	38%
Audited/revised volunteer protection percentage	36%	31%
Corrected state aid allocation	23,728	18,586
Excess state aid (issued less corrected allocations)	\$ 42,182	\$ 4,197*

\* Borough originally reported Volunteer Protection at 38%. Based on the audited/revised Volunteer Protection of 31%, the state aid allocation must be reduced by 7% of the 100% calculation of \$59,955.

**Criteria:** Section 706(a) of Act 205 states:

**Certification of service to municipalities by paid and volunteer firefighters.**

- (1) Each municipality served solely by paid firefighters shall annually certify that fact to the Auditor General in order to determine the ultimate distribution of the foreign fire insurance premium tax amount applicable to that municipality pursuant to subsection (b)(1).
- (2) Each municipality served solely by volunteer firefighters shall annually certify that fact to the Auditor General in order to determine the distribution of the foreign fire insurance premium tax pursuant to subsection (b)(2).
- (3) Each municipality served by both paid firefighters and volunteer firefighters shall annually certify to the Auditor General the proportion of the actual fire protection service in the municipality provided by the paid firefighters and the proportion of the actual fire protection service in the municipality provided by the volunteer firefighters in order to determine the distribution of the foreign fire insurance premium tax pursuant to subsection (b)(3).

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

- (4) The certification to the Auditor General shall be by an action initiated or ratified by the governing body of the municipality and shall be in a form prescribed by the Auditor General.

In addition, Section 7412 of Act 118, of 2010, in part, states:

A person does not lose status as a volunteer firefighter solely because he or she may also be a paid firefighter, **so long as the person is acting within the scope of his or her responsibilities as a member of a volunteer fire company at the pertinent time and not within the scope of his or her responsibilities as a paid firefighter.** (Emphasis added.)

Therefore, if a paid firefighter performs the same duties for which they are paid in their capacity as a volunteer firefighter, the individual is considered a paid employee and not a volunteer firefighter, thus losing their status as a volunteer firefighter under Act 118.

Cause: A recent decision by the Pennsylvania Commonwealth Court determined that Emmaus Fire Department members who received a stipend or wages based on hours worked were not volunteer firefighters, but rather, paid employees.<sup>1</sup> Despite this ruling, municipal officials over-certified the proportion of the actual fire protection service in the municipality provided by volunteer firefighters in the determination of the foreign fire insurance premium tax allowable to the municipality according to Act 205 and the requirements specified above by Act 118 and case law.

Effect: The municipality received excess state aid for the years 2017 and 2018. Since this relief association is the only recipient of the municipality's distribution of its state aid allocation for 2017 and 2018, it is this department's opinion that since the entire proceeds of the insurance premium tax on foreign casualty insurance companies are distributed annually to each eligible recipient municipality and then distributed to each eligible relief association, the excess state aid in the amount of \$46,379, must be returned to the Commonwealth for redistribution. Furthermore, the relief association's future state aid allocations may be withheld until the finding recommendation is complied with.

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<sup>1</sup> Borough of Emmaus v. Pennsylvania Labor Relations Board, 156 A.3d 384 (Pa. Cmwlth. 2017); *app. denied* 643 Pa. 82 (2017)



EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
FINDING AND RECOMMENDATION

**Finding – (Continued)**

Recommendation: We recommend that the relief association return the excess state aid of \$46,379 received for 2017 and 2018 to the Commonwealth. A check in this amount with interest compounded annually from date of receipt to date of repayment, should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 321 Finance Building, Harrisburg, PA 17120. A copy of the interest calculation must also be submitted along with evidence of payment.

Management's Response: Relief association management agreed with the finding as presented at the audit exit conference and indicated they will take action to comply with the recommendation.

Auditor's Conclusion: Due to the potential withhold of state aid, the relief association's compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the relief association.

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
POTENTIAL WITHHOLD OF STATE AID

A condition such as that reported by the finding contained in this audit report may lead to a total withholding of state aid in the future unless that finding is corrected. However, such action may not be considered if sufficient documentation is provided within 60 days to verify compliance with this department's recommendations. Such documentation should be submitted by the relief association to: Department of the Auditor General, Bureau of Fire Relief Audits, Room 327 Finance Building, Harrisburg, PA 17120.

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
SUPPLEMENTARY FINANCIAL INFORMATION  
CASH AND INVESTMENT BALANCES  
AS OF DECEMBER 31, 2018

Cash	\$ 35,368
Fair Value of Investments	<u>440,463</u>
Total Cash and Investments	<u>\$ 475,831</u>

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
 SUPPLEMENTARY FINANCIAL INFORMATION  
 SUMMARY OF EXPENDITURES  
 FOR THE PERIOD JANUARY 1, 2017 TO DECEMBER 31, 2018

Expenditures:

Benefit Services:	
Insurance premiums	\$ 25,567
Death benefits	9,000
Total Benefit Services	<u>\$ 34,567</u>
Fire Services:	
Equipment purchased	\$ 17,366
Equipment maintenance	1,666
Total Fire Services	<u>\$ 19,032</u>
Administrative Services:	
Officer compensation	\$ 4,720
Other administrative expenses	12,328
Bond premiums	1,484
Total Administrative Services	<u>\$ 18,532</u>
Total Investments Purchased	<u>\$ 411,000</u>
Other Expenditures:	
Payments on loan	<u>\$ 11,569</u>
Total Expenditures	<u><u>\$ 494,700</u></u>

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

**The Honorable Tom W. Wolf**  
Governor  
Commonwealth of Pennsylvania

Emaus Firemen's Relief Association, Inc. Governing Body:

**Mr. Donald Riley, Jr.**  
President

**Mr. John Reiss**  
Vice President

**Mr. James Reiss**  
Secretary

**Ms. Victoria Schadler**  
Treasurer

**Mr. William Springer**  
Trustee

**Mr. David Ernst**  
Trustee

**Mr. Jeffrey Kuhns**  
Trustee

**Mr. Clifford Foulke**  
Death Benefit Officer

EMAUS FIREMEN'S RELIEF ASSOCIATION, INC.  
REPORT DISTRIBUTION LIST

A report was also distributed to the following municipality, which allocated foreign fire insurance tax monies to this relief association:

**Mr. Shane M. Pepe**  
Borough Manager  
Emmaus Borough

This report is a matter of public record and is available online at [www.PaAuditor.gov](http://www.PaAuditor.gov). Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: [news@PaAuditor.gov](mailto:news@PaAuditor.gov).