on an adversarial basis, it is taken off the *pro confesso* docket and handled on a regular trial docket under Rules 501.2 and 507, rather than as *pro confesso.*

The word "trial" is defined by *Black's Law Dictionary* as the judicial consideration of *contested* issues of fact or law. No divorce case is placed upon the *pro confesso docket* unless there has been entry of default, which is to say that no case is placed on or remains on the *pro confesso* docket unless the record shows there are no contested issues.

See *Crane v. Reader,* 28 Mich. 527, 535, defining trial as the actual litigation of the merits in an action at law as distinguished from debate on the merits in a case in equity. Divorce cases sound in equity as set forth by statute.

From the precise language of Act 240, P.A. 1963, at Section 2528(5), it appears that the entry of a final judgment of divorce in a defaulted or *pro confesso* divorce case is governed by the requirement that there shall be paid to the court the sum of $4.00. Being governed by the provisions of subparagraph (5), it is therefore not governed by the provisions of (4) and (6) unless and until it has been removed from the *pro confesso* docket and placed upon a trial docket.

FRANK J. KELLEY,
Attorney General.

640323.2

FIRE DEPARTMENT: Sick leave.

Personnel regulations differentiating as to city employees between firemen and nonfiremen in debiting employees' accrued sick leave held invalid classification as established by the charter of the city of Saginaw.

No. 4310 March 23, 1964.

Hon. James H. Karoub
State Representative
The Capitol
Lansing, Michigan

You have addressed an inquiry to this office respecting the city employee sick leave provisions set forth in the 1938 Personnel Manual (your copy—1961 Revision) of the city of Saginaw, Michigan. The sick leave provisions are found at Section 4-5 of the manual and the part pertinent to your inquiry is found at Section 4-5.1 and reads as follows:

> "Each permanent full-time salaried employee may accumulate sick leave at the rate of ten (10) working days per year, except firemen on duty an average of sixty-three (63) hours per week, who shall accumulate sick leave at the rate of ten (10) calendar days per year. All such employees, other than firemen, shall have their accumulated sick leave reduced by one day for each working day of approved absence due to illness. Firemen shall have their accumulated sick leave reduced by one day for each calendar day of approved absence due to illness, beginning with the first duty day of absence, including each

succeeding day (whether a duty day or off day) and ending upon the employee's return to duty on a regular duty day, excluding, however, each intervening 'Kelly Day.' Sick leave shall begin to accrue as of the day an employee enters the service of the City, but may not be taken until he has been in the service of the City for at least six months. Should any employee be absent because of illness, during his probation period, he shall be placed on leave of absence without pay."

You have inquired whether the city has validly exercised its municipal power in varying the procedures used in charging off sick leave to firemen.

As I read Section 4-5.1, the full-time salaried employee engaged in non-fire fighting duties receives 10 working days or 10 eight-hour units of sick leave per year. When he reports in as sick on a given day, he is debited one eight-hour unit per working day missed due to illness. The fireman receives 10 calendar days per year as sick leave or 10 units of 24 hours each. Under the terms of Section 4-12.1 of the Personnel Manual, the regular city employee works a 40 hour week, whereas the fire department employee works a 63 hour a week on the basis of a 24 hour on-and-off duty schedule, with an additional 24 hours off duty ("Kelly Day") in every eight day period. However, when the fireman reports in sick he is debited one sick leave day for the first day missed and he is automatically debited with an additional sick leave day for the following day, even though under the terms of Section 4-12.1 he would not be scheduled to work that day. To put it another way, firemen are debited a sick leave day for each working day missed because of illness and for each off day, with the exception of "Kelly Days," occurring between the time of the initial report of sickness and his return to regular duty "on a regular duty day."

At issue then is whether the difference in treatment can be considered a classification or discrimination illegal under the constitutional guarantees of equal protection. United States Constitution, Fourteenth Amendment; Michigan Constitution of 1963, Article I, Secs. 1 and 2.

In adopting class legislation, the legislative body must reasonably relate the classification to the beneficial purpose sought to be accomplished. *Smith v. Wayne Probate Judge,* 231 Mich. 409. Extending privileges or immunities to one part of a group which are denied to the remaining part is invalid class legislation. *Haynes v. Lapeer Circuit Judge,* 201 Mich. 138. At times certain differences would serve as a reasonable basis for legislative classification, whereas at other times they would not serve as a rational foundation for classification. *Davidow v. Wadsworth,* 211 Mich. 90. The legislative classification must rest on some rational and substantive basis, not an artificial basis; mere isolation or arbitrary selections do not work valid or proper classifications, id.

In the cases of *U.S. Cold Storage Corp. v. Stolinski,* 168 Neb. 513, 96 N.W. 2d 408, and *Aluminum Cooking Utensil Co. v. City of North Bend,* 210 Or. 412, 311 P. 2d 464, legislative attempts at class legislation were invalidated as granting inordinate privileges and immunities to some to the detriment of others. In those cases the courts could find no substantial reason consistent with the purpose of the legislation for establishing a

privileged class. Resulting, therefore, was a natural class unnaturally divided into two fractions.

It can be easily assumed that the sick leave granted the Saginaw municipal employees could be termed one of those fringe benefits making city employment more competitive and more attractive. The purpose in affording sick leave benefits is served whether the employee be a fireman or not; a common privilege is there to be enjoyed by each and every employee. But in the method of debiting sick leave time, the provisions of Section 4-5.1 serve to dilute the privilege as enjoyed by the firemen. While many marked differences exist between fire fighting and other forms of municipal employment, no relationship suggests itself as existing between the status of fireman and the singular method used in debiting a fireman's sick leave account.

Inasmuch as both types of employees accumulate sick leave time in units equivalent to their work day, it would seem that a similar method of debiting the employee's sick leave reserve would be followed. This is not the case. As a matter of fact, the fireman is charged with sick leave days he ordinarily would not work under the schedule set down at Section 4-12.1, a schedule obviously drafted to comply with Act 125, P.A. 1925, as amended.[1] This act limits the duty of fire fighting personnel to no more than 24 hours in any 48 hour period and requires an off duty period of at least 24 consecutive hours in any 48 hour period.

Absent any valid grounds pertinent to distinguishing between firemen and other employees with respect to the debiting of employee's sick leave accounts, my opinion is that there are no grounds for treating the firemen any differently than the non-firemen employees. The provisions of Section 4-5.1 isolate firemen from non-firemen and in so doing an artificial, unreasonable classification results of the type outlawed in the *Davidow* case, supra, and other cited cases. The classification, therefore, is unconstitutional and a denial of the equal protection of the laws to those discriminated against by Section 4-5.1.

Accordingly, I am of the opinion that the cited sick leave provisions set forth in the city of Saginaw Personnel Manual represent an invalid exercise of municipal authority.

FRANK J. KELLEY,
Attorney General.

[1] C.L. 1948 § 123.841 et seq.; M.S.A. 1958 Rev. Vol. § 5.3331 et seq.