

FIREFIGHTERS - Retirement dates for service retirement benefits under the Firefighters' Unified Retirement System;

RETIREMENT SYSTEMS - Retirement dates for service retirement benefits under the Firefighters' Unified Retirement System;

MONTANA CODE ANNOTATED - Title 19, chapter 13; sections 19-13-104(13), 19-13-104(21), 19-13-701, 19-13-701(1)(a), 19-13-701(1)(b), 19-13-701(2), 19-13-702, 19-13-703;

SESSION LAWS OF 1983 - Chapter 53, section 7.

HELD: Under section 19-13-701(2), MCA, the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable.

23 July 1984

M. Valencia Lane
Associate Counsel
Insurance and Legal Division
Department of Administration
Sam W. Mitchell Building
Helena MT 59620

Dear Ms. Lane:

You requested my opinion on the following question:

If a member of the Firefighters' Unified Retirement System retires before the end of the month, will his service retirement benefits commence immediately, or on the first day of the following month?

Your question arises because of a 1983 legislative amendment to section 19-13-701, MCA, which states:

(2) The retirement allowance must commence on the first day of the month following the member's last day of membership service.

The question is one of interpretation of this subsection: that is, does the retirement allowance begin to accrue on "the first day of the month following the member's last day of membership service," or is the first payment, covering the portion of the previous month after the member's termination from service, to be made on that date?

It is my opinion that under subsection (2) the member's retirement allowance begins to accrue--it becomes payable--on "the first day of the month following the member's last day of membership service." My opinion is based on the pertinent language contained in the Firefighters' Unified Retirement Act, and the legislative history of section 19-13-701(2), MCA.

The Firefighters' Unified Retirement Act, Tit. 19, ch. 13, MCA, contains substantial language which creates a legislative scheme that contemplates uniformity of retirement dates for firefighters applying to receive service pensions. A member's earliest retirement date is his "minimum retirement date," which occurs on "the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service." (Emphasis added.) §§ 19-13-701(1)(a), 19-13-104(13), MCA. His latest retirement date, his "mandatory retirement date," occurs "on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 65." (Emphasis added.) §§ 19-13-701(1)(b), 19-13-702, MCA. He can retire after the "minimum retirement date" and before the "mandatory retirement date." § 19-13-703, MCA. This section states:

Application for service retirement. On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

This section lacks an express requirement that the elected retirement date be the first day of the month. However, section 19-13-104(21), MCA, defines "retirement date" to be "the date on which the first payment of the retirement or disability benefits of a member is payable." (Emphasis added.) Subsection (20) of that section defines "retirement allowance" to be "the monthly benefit payable after service or disability retirement." (Emphasis added.) These provisions must be read together with section 19-13-701(2), MCA, which, again, states, "The retirement allowance must commence on the first day of the month following the member's last day of membership service." Rocky Mountain Elevator Co. v. Bammel, 106 Mont. 407, 81 P.2d 673, 676 (1938). I construe these sections to mean the service retirement benefits begin to accrue on the first day of the month following the member's termination from service; the benefits are payable, not paid on that day.

The legislative history of section 19-13-701(2), MCA, is an additional basis for my conclusion. That subsection came from Senate Bill 216 (1983 Mont. Laws, ch. 53, § 7). Senate Bill 216 included the same language for most of the public retirement systems, including the Firefighters' Unified Retirement System. The purpose of this particular legislation was clearly explained by Lawrence P. Nachtsheim, administrator of the Public Employees' Retirement Division. In his testimony to the House and Senate State Administration Committees, he explained the twofold purpose of the bill. First, its purpose was to establish uniform retirement dates, on the first day of the month following the member's termination from service for service retirement benefits. Second, the bill would ensure that all retirees begin accruing their benefits on that first day of the month whether or not they had timely filed their retirement applications in accordance with section 19-13-703, MCA.

It is clear, therefore, that the purpose of Senate Bill 216 was to establish the first day of the month after termination from service as the retirement date for all members who apply for service retirement benefits. The bill does not establish the first pay date for the benefit payments. Consequently, if a member should terminate his active service at any time prior to the last day of the month, he would not begin to accrue

service retirement benefits until the first day of the next month.

I understand that prior to the 1983 legislation, firefighters were able to retire during the month and receive pro rata credit for the portion of that month after retirement. The 1983 legislation eliminates this pro rata credit because the firefighters can no longer elect a retirement day other than the first day of the month.

THEREFORE, IT IS MY OPINION:

Under section 19-13-701(2), MCA, the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable.

Very truly yours,

MIKE GREELY
Attorney General