

VOLUME NO. 35**Opinion No. 72**

CITIES AND TOWNS — Police departments, interlocal cooperation agreements; expenditure of state funds, police retirement system.

COUNTIES — Police departments, interlocal cooperation. Sections 11-1834, 11-1837, 16-4901, et seq., R.C.M. 1947.

- HELD:**
- 1. A police department within the meaning of section 11-1834 is a factual determination.**
 - 2. Police services may be provided pursuant to an interlocal agreement between local governmental units.**
 - 3. A contracting municipality in an interlocal agreement is eligible to receive state payments authorized in section 11-1834.**
 - 4. A city council is responsible for promulgating rules and regulations relating to the expenditure of state funds received under section 11-1834 by a municipality not governed by the provisions of the police retirement system law.**

5. A municipality not governed by the provisions of the police retirement system law may expend state funds received under section 11-1834 for training and pensions for members of a police department providing law enforcement services pursuant to an interlocal agreement.

March 11, 1974

Mr. George Pendergast, Administrator
Municipal Audit Division
Department of Intergovernmental Relations
Capitol Station
Helena, Montana 59601

Dear Mr. Pendergast:

You have requested my opinion on the following questions:

1. What would constitute a police department within the meaning of section 11-1834, R.C.M. 1947?
2. May police services be provided pursuant to an interlocal agreement between a city or town and another public agency in the manner set forth in Chapter 16, Title 49, R.C.M. 1947?
3. If such an interlocal agreement can be made, would a contracting city or town forfeit the right to receive state payments authorized in section 11-1834, R.C.M. 1947?
4. Who, if anyone, is responsible for promulgating rules and regulations applicable to the expenditure of payments by a city or town not governed by the provisions of the police retirement system law as set out in Chapter 18, Title 11, R.C.M. 1947?
5. Could a city or town not governed by the provisions of the police retirement system law, which has entered into an interlocal agreement for police protection, properly expend their payment for the training of or to purchase pensions for members of the police department applying the contracted service?

Section 11-1834, Revised Codes of Montana, 1947, provides for annual state payments to municipalities with police departments.

At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant in an amount equal to the sum paid to that city or town for the use and benefit of its fire department relief association pursuant to the provisions of section 11-1919, R.C.M. 1947, as amended.

In your first question you have asked what would constitute a police department within the meaning of section 11-1834. A police department is not

defined by statute in Montana. Your particular question requires a factual determination to be resolved on a case-by-case basis. It would appear, however, that any regular organization providing police services to a municipality would qualify as a police department within the meaning of section 11-1834. (See **Travaline v. Borough of Poulsboro**, 121 N.J.L. 453, 3 A.2d 162, and **Shibla v. Township Committee**, 136 N.J.L. 506, 56 A.2d 734.) Facts which may be considered in determining whether a municipality has a police department are the existence of salaried police officers, a police or jail facility, and budgeting by the municipality for police services.

In response to your second question, the Constitution of Montana allows broad authority for intergovernmental cooperation. Article XI, section 7, provides:

- (1) Unless prohibited by law or charter, a local government unit may
 - (a) cooperate in the exercise of any function, power or responsibility with,
 - (b) share the services of any officer or facilities with,
 - (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.
- (2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

In addition, section 16-2726, et seq., specifically allows cities and counties, other than first and second class counties, to consolidate their law enforcement services. The particular statutory requirements for entering into interlocal agreements are set out in Title 16, Chapter 49. Thus, pursuant to constitutional and statutory authority, police services may be provided through an interlocal agreement between local governmental units.

Regarding your third question, a contracting city or town under an interlocal agreement providing for cooperative law enforcement services would not forfeit the right to receive state payments authorized under section 11-1834, supra. Under such an agreement each municipality would still be provided law enforcement services through a local police department. Thus, each municipality would have a police department within the meaning of section 11-1834, even though that department serviced more than one local governmental unit.

Section 11-1837, R.C.M. 1947, provides for the expenditure of state funds, received under section 11-1834, supra, by a municipality not having a police retirement system:

Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all fund [sic] received pursuant to this act.

In response to your fourth question, cities and towns are vested with legislative powers. **State v. Stark**, 100 Mont. 365, 52, P.2d 890. Pursuant to this authority, the city council is responsible for promulgating rules and regulations applicable to the expenditure of state payments received under section 11-1834 in those cities and towns which are not governed by the provisions of the police retirement system. The police retirement system, as set out in Chapter 18 of Title 11, is applicable only to first and second class cities and other cities and towns which have adopted by ordinance this statutory retirement system.

Responding to your last question, a police department, pursuant to an interlocal agreement, may serve more than one local governmental municipality. A city or town not governed by the provisions of the police retirement system law may thus properly expend the state payment received under section 11-1834 for police training or to purchase pensions for members of the police department supplying police services pursuant to an interlocal agreement. This expenditure is for training or pensions for "their police department" within the meaning of section 11-1837, *supra*.

THEREFORE, IT IS MY OPINION:

1. The existence of a police department within the meaning of section 11-1834 is a factual determination.
2. Police services may be provided pursuant to an interlocal agreement between local governmental units.
3. A contracting municipality in an interlocal agreement is eligible to receive state payments authorized in section 11-1834.
4. A city council is responsible for promulgating rules and regulations relating to the expenditure of state funds received under section 11-1834 by a municipality not governed by the provisions of the police retirement system law.
5. A municipality not governed by the provisions of the police retirement system law may expend state funds received under section 11-1834 for training and pensions for members of a police department providing law enforcement services pursuant to an interlocal agreement.

Very truly yours,
ROBERT L. WOODAHL
Attorney General