

OPINIONS OF THE ATTORNEY GENERAL

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OPINION NO. 51

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CONTRACTS - Impairment of;
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HELD: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system.

19 February 1982

M. Valencia Lane, Esq.
Public Employees' Retirement Board
Department of Administration
1712 Ninth Avenue
Helena, Montana 59620

Dear Ms. Lane:

You requested an opinion concerning whether the allowance adjustments in section 19-13-1007, MCA, apply to firemen who were hired before July 1, 1973, and who retired between July 1, 1973, and July 1, 1981.

In 1981, the Legislature established a new retirement system for firefighters. The purpose of the new system is to promote equity and security for retired firefighters by creating a centrally administered retirement system. § 19-13-102, MCA. The Firefighters' Unified Retirement System, Title 19, ch. 13, MCA, applies to first- and second-class cities with full-paid firefighters on a compulsory basis, and to other cities on a voluntary basis. § 19-13-105, MCA. Because those other cities retain their relief associations, the old retirement system has been retained, and now two separate retirement systems exist.

Under the old system, all retirees (or survivors) are entitled to a monthly pension, paid by the respective relief association, of one-half the monthly compensation last received by the member. § 19-11-602(1), MCA. In addition, those firefighters retiring after July 1, 1973, are entitled to an adjustment up to at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided in the budget each year. § 19-11-602(3), MCA. It appears that the associations pay this adjustment. As a confirmed active firefighter's salary increases due to inflation and other factors, the retiree's benefits would likewise reflect the increases. See 37 Op. Att'y Gen. No. 3. The same adjustment provisions are provided to

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firefighters who retired before July 1, 1973. However, this supplemental sum is paid to the relief associations by the State under a formula outlined in section 19-11-606, MCA. Thus, under the old system all eligible retirees are entitled to a monthly service pension of at least one-half of the regular monthly salary paid to a newly confirmed active firefighter of that city, adjusted whenever there is a salary increase.

A similar formula has been incorporated in the new system, which first- and second-class cities must now join. Under the provisions of section 19-13-704(1)(a), MCA, all eligible members hired before July 1, 1981, are entitled to a monthly service retirement equal to one-half the monthly compensation last received by the member prior to retirement. In addition, section 19-13-1007(1), MCA, provides an "allowance adjustment" for a member hired on or after July 1, 1973, but before July 1981. Those individuals are entitled to receive at least one-half the monthly compensation paid to a newly confirmed active firefighter of the city, adjusted annually. A similar adjustment is provided in section 19-13-1006, MCA, to firefighters who retired before July 1, 1973. Separate provisions apply to firefighters hired on or after July 1, 1981. See, e.g., § 19-13-704(2), MCA.

Unfortunately, the new plan has failed to specifically provide an adjustment for one group of firefighters--those who were hired prior to July 1, 1973, but retired between July 1, 1973 and July 1, 1981. As noted above, those firefighters were given an "adjustment allowance" under the old plan in section 19-11-602(3), MCA. Your question is whether that group of firefighters is entitled to all of the pension benefits accrued to them under the old system. It is my opinion that they are entitled to those benefits.

It is clear that the Legislature intended that no one was to lose existing benefits as a result of the new plan. In referring to the implementation of the new system, section 19-13-107, MCA, provides:

Effect on members of prior plans. A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this plan retains all rights and benefits accrued under a prior plan.

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This section codifies what is already protected by the Montana Constitution, article II, section 31, which provides that no "law impairing the obligation of contracts...shall be passed by the legislature." A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. State v. Fire Dept. Relief Ass'n, 138 Mont. 172, 355 P.2d 670 (1960). Once this right has accrued it becomes an integral part of the employment contract and cannot be impaired by subsequent legislation. Local No. 8 International Ass'n v. City of Great Falls, 174 Mont. 53, 568 P.2d 541 (1977); Bartels v. Miles City, 145 Mont. 116, 399 P.2d 768 (1965); Clarke v. Ireland, 122 Mont. 191, 199 P.2d 965 (1948).

It is clear that those firemen who have transferred to the new retirement system cannot lose any retirement benefits accrued to them under the old system. These vested pension rights include the provisions which were used to compute the adjusted benefits under the old system. Thus, those firefighters who were hired before July 1, 1973, and who retired during the period between July 1, 1973, and July 1, 1981 are entitled to all pension benefits accrued to them under the old retirement system.

THEREFORE, IT IS MY OPINION:

In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system.

Very truly yours,

MIKE GREELY
Attorney General