

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 72

FIREFIGHTERS - Interpretation of Firefighters' Unified Retirement System;
RETIREMENT SYSTEMS - Firefighters' Unified Retirement System;

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STATE AGENCIES - State Auditor's function with regard to Firefighters' Unified Retirement System;
1979 LAWS OF MONTANA - Chapter 114, section 13, chapter 457, section 2;
MONTANA CODE ANNOTATED - Sections 19-11-606, 19-11-606(1), 19-13-1006;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 77 (1977).

HELD: Section 19-13-1006, MCA, permits the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city that last employed him. The funds distributed to PERD for this purpose in subsection (2) should therefore be used to reimburse PERD for the payments made to the recipients in the previous fiscal year.

17 September 1982

M. Valencia Lane, Associate Counsel
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Sam W. Mitchell Building
Helena, Montana 59620

Dear Ms. Lane:

You have requested an opinion concerning interpretation of section 19-13-1006, MCA, which provides:

Supplement to certain retirement allowances. The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse and children a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. In the case of volunteer firefighters, the retirement allowance may not exceed \$75 per month. Distribution of the funds provided for this purpose under 19-11-606(1) shall be made as follows:

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(1) At the beginning of each fiscal year the administrator shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the administrator an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding.

(2) The administrator shall use the funds to increase the monthly retirement allowances of the retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year.

This section is part of the Firefighters' Unified Retirement System, Title 19, ch. 13, which was enacted in 1981. This system is administered by the Public Employees' Retirement Division (PERD) and it applies to first- and second-class cities with full-paid firefighters on a compulsory basis, and to other cities on a voluntary basis. The remaining cities participate in the old Firefighters' Retirement System, Title 19, ch. 11, MCA, which is administered by the relief associations of the individual cities.

Section 19-13-1006, MCA, is substantially the same as, and its language was in fact taken from, section 19-11-606, MCA, the corresponding provision in the old retirement system. The only difference is that under the old system, the money for the supplemental benefits is transferred by the State Auditor from the earmarked revenue fund to the individual cities and towns to be administered by their respective relief associations; under the new system, the money is transferred to PERD. Section 19-11-606, MCA, was enacted in 1975 and since that time has been administered as follows: The retiree's supplement is calculated according to the monthly salary paid to a confirmed active firefighter that same fiscal year. Thus when the firefighter's salary increases during any given month, the retiree's benefits increase accordingly at the same time. The money to pay for those increases will not have been

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received from the earmarked fund, however, because the statutory formula which establishes the amount to be received each year from the earmarked fund is calculated based on salaries and benefits received by a confirmed active firefighter in the preceding fiscal year and does not take into account anticipated increases for the coming year. As a result, the relief associations have administered the program by covering current year increases from their own funds and then reimbursing their funds from the revenue received from the earmarked fund at the beginning of the new fiscal year.

I have been informed by PERD, and there appears to be no dispute, that the Firefighters' Unified Retirement System intended to continue the supplemental benefits under section 19-11-606, MCA, for firefighters transferring to the new system, including the manner in which the benefits were computed and administered. The same statutory language was adopted to ensure that continuity. However, PERD, in interpreting section 19-13-1006, MCA, did not agree that the statute authorized the supplemental benefits to be computed and distributed in the manner they had been under the old system. PERD believes that the statute requires the following application: At the beginning of each fiscal year, the State Auditor transfers to PERD an amount based on salaries and benefits received in the previous fiscal year; the amount of supplemental benefits to be received by the retirees is based on the regular monthly salary a confirmed active firefighter received in the previous fiscal year. Thus when a confirmed active firefighter receives a raise in salary, it will be reflected in the retiree's benefits in the following fiscal year. PERD reasons that subsection (2) of section 19-13-1006, MCA, provides that the money used for the supplemental benefits is given to PERD, not to "reimburse" PERD's retirement fund, but to supplement the benefits being received by the retirees, the amount of the supplement being "equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year." In other words, the money for the supplemental benefits is not given to the retiree until it is received by PERD. The difference in interpretation affects the timing of an increase in benefits. Under the firefighters' interpretation, the retiree receives an increase in benefits at the same time the confirmed active

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firefighter receives a raise in salary. Under PERD's interpretation, the retiree's benefits will not reflect the raise until the next fiscal year.

Section 19-13-1006, MCA, has a dual purpose. The first paragraph is substantive and describes the supplemental benefits to which the eligible recipients are entitled. The remainder of the section provides the procedure for its administration. The ambiguity lies in the wording of the first sentence of the substantive section: "The plan shall pay...a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city." (Emphasis added.) This language does not clearly express which year's salary is to be the basis of the retiree's allowance. The drafters of the new provisions intended that a recipient's allowance increase simultaneously with a confirmed active firefighter's salary increase. The relief associations adopted an interpretation of the administrative portion of the statute which permitted this simultaneous increase in benefits by advancing the funds needed for the increases and then reimbursing their own funds at the beginning of each fiscal year.

It is a fundamental rule of statutory construction that the intent of the Legislature controls. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 632 P.2d 707 (1981). A statute should not be interpreted to defeat the Legislature's object or purpose. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963). Furthermore, the Legislature, in enacting section 19-13-1006, MCA, is presumed to have acted with full knowledge of the construction given to the predecessor statute, section 19-11-606, MCA, from which the wording of the present statute was adopted, and in enacting the new law is presumed to have adopted such construction. Helena Valley Irr. District v. State Highway Commission v. Yost Farm Co., 142 Mont. 239, 384 P.2d 277 (1963).

All subsections of the statute should be construed in harmony to effect the intent of the Legislature when possible. Montana Auto Ass'n v. Greely, 38 St. Rptr. 1174, 632 P.2d 300 (1981). Section 19-13-1006, MCA, can be so construed and the administrative section can be construed in harmony with the substantive portion. The reenactment of the wording of the old statute is also an

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adoption of the construction placed on that section by the agencies and associations administering it. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 Mont. 209, 376 P.2d 1002 (1962).

The need for corrective legislation is evident. Legislation authorizing the release of additional amounts of money from the earmarked revenue fund, which reflect estimated anticipated raises in salaries of the confirmed active firefighters for the coming year, might be considered.

Similar problems arose with the Police Retirement System, Title 19, ch. 9, MCA. See 37 Op. Att'y Gen. NO. 77 (1977). The problems inherent in those statutes were corrected through legislation. See 1979 Mont. Laws, ch. 14, § 13, ch. 457, § 2. Similar legislation might be appropriate here.

THEREFORE, IT IS MY OPINION:

Section 19-13-1006, MCA, permits the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city that last employed him. The funds distributed to PERD for this purpose in subsection (2) should therefore be used to reimburse PERD for the payments made to the recipients in the previous fiscal year.

Very truly yours,

MIKE GREELY
Attorney General