

VOLUME NO. 43

OPINION NO. 17

POLICE - Ineligibility of out-of-state police service for inclusion in local retirement fund;

POLICE DEPARTMENTS - Ineligibility of out-of-state police service for inclusion in local retirement fund;

RETIREMENT SYSTEMS - Ineligibility of out-of-state police service for inclusion in local retirement fund;

MONTANA CODE ANNOTATED - Title 19, chapter 10; sections 19-4-402, 19-10-406.

HELD: A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based upon prior out-of-state police service.

June 1, 1989

Katherine R. Curtis  
Columbia Falls City Attorney  
P.O. Box 329  
Columbia Falls MT 59912-0329

Dear Ms. Curtis:

You requested my opinion on the following question:

May a police officer buy into the local police retirement fund in order to receive certain benefits based upon previous out-of-state police service?

The city of Columbia Falls maintains a local police retirement fund pursuant to Title 19, chapter 10, MCA. In 1985 the city adopted a policy enabling police officers to buy into the local police retirement fund for retirement benefits based on previous out-of-state police service. Recently a police officer submitted an amount of money to the city for the purpose of buying an additional number of years toward his retirement benefits based upon his prior law enforcement service in another state.

Title 19, chapter 10, MCA, does not provide statutory authority for the purchase of creditable police service performed out-of-state. Section 19-10-406, MCA, permits a police officer to purchase credit based on previous military duty. However, provisions for purchasing any other creditable service are conspicuously absent. The rules of statutory construction preclude me from imputing authority to the city that the Legislature has failed to provide. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660, 662 (1968). Moreover, since the Legislature has expressly authorized the purchase of credit for military duty, its failure to provide for purchase of credit for any other type of service indicates a clear legislative intent to preclude such other purchases. See Reed v. Reed, 130 Mont. 409, 304 P.2d 590, 592 (1957) (where a statute contains express mention of certain authority, the mentioning of it implies exclusion of any other). By contrast, the Legislature has provided for purchase of out-of-state creditable service for other retirement programs. For example, the Teachers' Retirement Act expressly authorizes teachers to buy creditable service for out-of-state teaching. § 19-4-402, MCA.

I conclude that the city does not have authority to permit a police officer to buy into a retirement program for previous out-of-state service.

You have also inquired about the city's obligation with respect to the police officer who has already paid the city for his out-of-state service. The city's lack of authority to make such an arrangement applies to this officer also. The money submitted by him to pay for his out-of-state service should be refunded.

THEREFORE, IT IS MY OPINION:

A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based upon prior out-of-state police service.

Sincerely,

MARC RACICOT  
Attorney General