

Dear Mr. Holmes:

You have requested my opinion on the following questions:

1. A fire department relief association has provided in their by-laws that payment for hospital account of a member injured or becoming sick in line of duty may be made from the association disability fund in an amount not exceeding \$250.00. Is such a by-law contrary to the provisions of Section 5133, Revised Codes of Montana, 1935, as amended by Chapter 73, Laws of 1939?

2. A city council has granted a temporary increase in the compensation of members of the fire department effective until June 30, 1944. In the event a member of the relief association of such city elects to retire or becomes eligible for service pension, during the time such increase is effective, would his rate of pension be based on the amount of monthly wages received prior to the increase or on the amount received during the time the increase is in effect?

An answer to your first question necessitates consideration of Sections 5132, 5133, as amended, and 5136, Revised Codes of Montana, 1935.

Section 5135, Revised Codes of Montana, 1935, provides that the disability and pension fund of fire department relief associations may be used only for payment of the following:

"1. A service pension to a member who, by reason of service, has become entitled to a service pension.

"2. A pension to a member who has become maimed or disabled in line of duty.

"3. A benefit or allowance to a member who has suffered injury in line of duty.

"4. A benefit or allowance to a member who has contracted sickness in line of duty.

"5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of two hundred fifty dollars (\$250.00).

"6. Payment of a pension to the widow, orphan or orphans of a deceased member."

Opinion No. 192.

**Fire Department Relief Association—
Disability and Pension Fund, Firemen—
Retirement Pension—Service Pension—
Pension, Firemen—Benefit and
Allowance.**

Held: That the amount of benefit allowance to be paid a member of a fire department relief association for disability from sickness or injury incurred in line of duty is within the discretion of the association, which may legally provide therefor in its by-laws. The rate of retirement pension provided under Section 5132, Revised Codes of Montana, 1935, is based on the amount of monthly compensation or acceptance of service pension, even though at such time a temporary increase in compensation was in effect.

March 27, 1944.

Mr. John J. Holmes
State Auditor
State Capitol
Helena, Montana

It will be noted that the legislature in restricting the use of the disability and pension fund to the six specific cases mentioned, did not restrict the amount to be paid, except in the case of funeral expenses. It will also be noted that the first two cases mentioned designate the payment as a "service pension," while the third and fourth cases are designated as "benefit and allowance." It is evident that the legislature used these different terms for a reason. A distinction was made for the payment of the different purposes.

It is a statutory rule of construction that the words and phrases used in the codes or other statutes of Montana are construed according to the context and approved usage of the language. (Section 15, Revised Codes of Montana, 1935.) The word "pension" has an approved meaning. It denotes a regular payment over a period of years to an individual in recognition of past services. "Benefit" or "allowance" is a payment for a temporary period only. Therefore, the first purpose mentioned in Section 5135, *supra*, refers to the retirement pension provided for in Section 5132, Revised Codes of Montana, 1935, and the second purpose refers to the disability pension provided for in Section 5133, Revised Codes of Montana, 1935.

In providing the retirement pension in Section 5132, *supra*, and the disability pension in Section 5133, *supra*, the legislature restricted the payment to a sum not in excess of one-half the monthly salary last received. In neither item three nor four, the benefit allowance for injury and sickness incurred in line of duty, did the legislature restrict the amount of payment. Had the legislature intended to do so, they could have easily provided therefor as they did in the other cases. Hence, it follows that the amount of payment to be made as benefit or allowance for disability from injury or sickness incurred in line of duty is within the discretion of the association. The association may legally provide in their by-laws the amount of such allowance or benefit and the duration of time it shall be paid.

In answer to your second question, I may state that the statutes, Section 5132 providing retirement pension, and Section 5133, providing service pension, are plain and unambiguous and need no interpretation. It clearly states that the amount to be paid shall not exceed

"one-half of the sum last received as a monthly compensation." No language could be clearer. Therefore, a member who elects to retire under the provisions of Section 5132, or who becomes entitled to a service pension under the provisions of Section 5133, prior to June, 1944, when the increase became ineffective, is entitled to an amount not to exceed the monthly compensation he is receiving at the time—in the instant case, one-half the increased monthly compensation. The rate of retirement or disability pension would be based on the monthly compensation received during the period July 1, 1943, to June 30, 1944, should the member retire or accept a disability pension during such period, because such compensation would be the "last received" by such member.

It is therefore my opinion:

1. The rate of retirement pension provided under Section 5132, Revised Codes of Montana, 1935, and of service pension provided under Section 5133, Revised Codes of Montana, 1935, is based on the amount of monthly compensation last received by the member at the time of his retirement or acceptance of service pension, even though at such time a temporary increase in compensation was in effect.

2. The amount of benefit allowance to be paid a member of a fire department relief association for disability from sickness or injury incurred in line of duty is within the discretion of the association, which may legally provide therefor in its by-laws.

Sincerely yours,
R. V. BOTTOMLY
Attorney General