

Opinion No. 2

**Cities And Towns—Budgets—Council
—Authority—Emergencies—Procedure
For Declaration—Salaries of Firemen
And Policemen.**

Held: Once the budget has been approved the city council may not increase the salaries of firemen and policemen, unless an emergency is declared to exist. The law provides that the city council must determine if there is an emergency.

January 23, 1951.

Mr. W. A. Brown
State Bank Examiner
Capitol Building
Helena, Montana

Dear Mr. Brown:

You have requested my opinion on the following question:

“May a City Council legally increase the salaries paid to policemen and firemen, if no provision was made for granting such a raise in the annual budget of the City?”

The Budget System for Cities and Towns is specifically set forth in Sections 11-1401 to 11-1413, R. C. M., 1947. The provisions of these sections are mandatory upon the city or town councils and not merely directory.

The purpose of the Budget Act is to set up an orderly system to handle city finances. The preliminary budget which is compiled by the City Clerk must set forth in detail the anticipated

expenditures of the city for the next fiscal year. Before the budget is approved provision is made for notice to the taxpayers that a hearing will be held by the city council and any taxpayers may appear and be heard for or against an part of the budget. Once the budget is approved the city council must levy sufficient taxes to defray the anticipated expenditures of the various funds included in the budget. Once the budget is approved and tax levies made the city may not incur any indebtedness or liability in excess of the amounts provided for in the budget, except upon an order of a court of competent jurisdiction, or for an emergency. Sec. 11-1408, R. C. M., 1947.

Thus, it is apparent that the city council may not raise the wages of policemen or firemen once the budget has been approved, unless an emergency exists. Section 11-1409, R. C. M., 1947, provides in part as follows:

"(1) In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the council by unanimous vote of the members present at any meeting the time and place of which all of the members shall have had reasonable notice, shall adopt and enter upon the minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency, and the fund against which emergency warrants shall be drawn, and shall publish the same together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one (1) week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published in the official newspaper of the municipality and if there be none then in a newspaper of general circulation in the county in which the municipality is located . . ."

Therefore, it is clear from the foregoing provisions of the statute that the City Council may adopt a resolution stating that an emergency exists. It is common knowledge that the present

international situation has disrupted the economy of the entire nation. The diversion of materials to defense production has caused a decrease in goods available for consumption by civilians, and as a consequence prices have risen sharply and the dollar has become more inflated. That an emergency exists is clear, but whether or not it is a public emergency of such a nature as to warrant the issuance of registered warrants by the city to grant an increase in wages to the firemen and policemen is a question of fact that the law requires must be determined by the city councils of the various cities and is not a question of law upon which the Attorney General may render an opinion.

The fact that request for a wage increase was made to the council by the policemen and firemen at the time the budget was approved, and which request was denied, does not necessarily preclude the city council from now declaring that an emergency exists. The test of the statute is whether the council could foresee the emergency, the increased cost of living. If the council did foresee the sharp rise in prices that has taken place, but felt that the present salary scale was sufficient, then no emergency may now be created. However, if the council did not foresee that the cost of living would rise so sharply, it is now free to increase the salary scale by declaring by resolution that an emergency exists.

Also, there must be a unanimous vote of the council members present at the meeting in which the emergency is declared, and notice must be given to the taxpayers that a hearing will be held. Further, the total of all emergency budgets in any one year must not exceed twenty five per centum of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for the particular fund.

Therefore, it is my opinion that the only way in which the salaries of firemen and policemen may be increased, if the amount of the increases has not been budgeted, is for the city council to declare an emergency. Whether or not a public emergency exists is a question of fact for the city council to determine. If an emergency is declared

to exist the statutory provisions of Section 11-1409, R. C. M., 1947, must be adhered to strictly.

Very truly yours,
ARNOLD H. OLSEN
Attorney General