

## Opinion No. 3

**Public Employees Retirement System  
—Industrial Accident Board—Public  
Retirement Board.**

**Held:** An employee who is a member of the Public Employees Retirement System and who is also covered by Industrial Accident Insurance shall be eligible to draw benefits from the Industrial Accident Board and shall also be entitled to whatever retirement allowance is payable under the circumstances of his case. The benefits paid to an injured workman by the Industrial Accident Board are entirely separate and distinct from any payments made out of the retirement fund and the Public Employees Retirement Board may not subtract benefits paid by the Industrial Accident Board when computing the retirement allowance to be paid by the Public Employees Retirement System.

February 15, 1951.

Mr. John F. Sasek, Secretary  
Public Employee's Retirement System  
Sam Mitchell Building  
Helena, Montana

Dear Mr. Sasek:

You have requested my opinion as to the proper interpretation of Section 68-901 (h) of the Revised Codes of Montana, 1947. Such interpretation is sought to assist the Public Employees Retirement Board in determining what benefits are payable under the following circumstances:

A was injured while in the employment of the City of Helena, State of Montana. When A was injured he was a member of the Public Employees Retirement System and he was also covered by Industrial Accident Insurance.

The Industrial Accident Board paid the said A a lump sum settlement of \$1,500.00 based on weekly payments for his injury.

The Industrial Accident Board certified to the Public Employees Retirement Board that A was incapacitated as a result of the said injury arising out of and in the course of his employment.

The question presented by the above facts is whether the Retirement Board should pay A his full retirement allowance without regard to the payments made to him by the Industrial Accident Board or whether the Retirement Board should, in paying benefits to A, deduct the amount which he has received from the Industrial Accident Board.

Subsection (h) of Section 68-901, supra, is as follows:

"Any member shall be retired for disability regardless of age or amount of service, if incapacitated for the performance of duty as the result of an injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration, but the industrial accident board shall determine, in the same manner as for all other state employees, whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the absence of an application to the industrial accident board, filed by a proper party, the board of administration hereunder shall proceed with retirement and with the payment of benefits payable under the retirement system when disability does not result from injury or disease arising out of and in the course of their employment. If the industrial accident board determines on the basis of such an application subsequently filed, that disability resulted from injury or disease arising out of and in the course of employment, an amount equal to said benefits shall be deducted from the benefits payable under the retirement system because of such determination. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so in-

capacitated, regardless of the cause, shall be retired regardless of age but only after ten (10) years of service to the state, or to the contracting city." (Emphasis supplied)

While the above quoted provision states that "an amount equal to said benefits shall be deducted", it is my opinion that "said benefits" can refer only to benefits paid by the Public Employees Retirement System and has no application to any payments made to an injured workman by the Industrial Accident Board.

"Said benefits" as used in sub-section (h) refers to retirement benefits paid by the Retirement Board when there has been no determination made that the injury responsible for retirement arose out of and in the course of employment. Such benefits will be in an amount based upon service and contributions. In no event will the disability retirement allowance based upon such factors equal the benefits payable when it has been determined that the disability resulting in retirement was the result of an injury arising out of and in the course of employment. Sub-section (j) of Section 68-901 provides that in such event the retirement allowance shall be fifty per centum of his final compensation. Thus it can be seen that a member of the Public Employees Retirement System retired upon a disability retirement is paid a certain amount in benefits from the date of retirement and if and when it is determined that his disability was job incurred he will be paid benefits equal to one-half of his last compensation. When the latter payments are made the amount of the payments previously made are to be deducted, since those are the "said benefits" referred to in sub-section (h).

The Industrial Accident Board is only mentioned in sub-section (h) for the purpose of making a determination whether the injury was incurred in the course of and arose out of the employment. Evidently it was the legislative intent that since the Industrial Accident Board had already set up the machinery for making such determination there was no need to duplicate said machinery in the Public Employees Retirement Board.

There can and should be no confusion between the payments made to injured workmen under the Industri-

al Accident Board and the retirement benefits provided for by the Retirement System. The Industrial Accident Fund is made up of the employer contributions and the employees do not contribute to such fund. Under the Retirement system each public employee pays a certain portion of his salary to the retirement system. The funds are entirely separate and distinct and the only relationship between the two funds is that both are administered by Boards created by the State of Montana.

It is, therefore, my opinion that an employee who is a member of the Public Employees Retirement System and who is also covered by Industrial Accident Insurance shall be eligible to draw benefits from the Industrial Accident Board and shall also be entitled to whatever retirement allowance is payable under the circumstances of his case. The benefits paid to an injured workman by the Industrial Accident Board are entirely separate and distinct from any payments made out of the retirement fund and the Public Employees Retirement Board may not subtract benefits paid by the Industrial Accident Board when computing the retirement allowance to be paid by the Public Employees Retirement System.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General