

Opinion No. 51.

**Police — Police Reserve Fund — Trustees, Payment of Police Reserves—
Salary — Beneficiaries —
Widows—Chapter 45,
Laws of 1953.**

HELD: 1. The legislature has the power to increase or modify pension benefits granted under the provisions of the Police Reserve Fund.

2. Where a widow has been receiving compensation under the provisions of Section 11-1821, R. C. M., 1947, as amended by Chapter 69, Laws of 1951, she is entitled to receive as compensation a sum equal to one-half ($\frac{1}{2}$) the salary her husband was receiving during the year prior to the time he passed to the police reserve list.

3. Where a policeman passes to the reserve list prior to July 1, 1953 (the effective date of Chapter 45, Laws of 1953), and subsequently dies, the payments to the widow should be one-half ($\frac{1}{2}$) the salary her husband was receiving prior to the time he passed to the police reserve list.

4. The payments to an eligible widow of a police officer, who passed to the reserve list after July 1, 1953, and prior to making the increased contribution to the fund as required by Chapter 54, Laws of 1953, should be a sum equal to one-half ($\frac{1}{2}$) the salary her husband was receiving during the year prior to the time he passed to the police reserve list.

5. The payment to the reserve policeman or his widow is based on the salary he was receiving during the year prior to the time he passed to the police reserve list.

November 25, 1953.

Mr. R. E. Towle
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You have submitted the following questions:

"1. Is a widow of a police officer, who dies prior to the effective date of the 1953 amendment to Section 11-1821, R. C. M., 1947, entitled to an increase in payments after the effective date of the amendment under the provisions of the amendment?"

"2. Are the payments to the widow of a police officer who passed to the reserve list prior to, but who dies after, the effective date of the 1953 amendment to Section 11-1821, R. C. M., 1947, based upon the provisions of the code prior to the 1953 amendment or after such amendment?"

"3. Are the payments to the widow of a police officer who passes the reserve list after the effective date of the 1953 amendment to Section 11, 1821, R. C. M., 1947, but before any increased contribution to 3% by way of salary deduction under the provision of the 1953 amendment to Section 11-1825, R. C. M., 1947, and who dies thereafter, based upon the provisions of the code prior to the 1953 amendment or after such amendment?"

"4. Is payment to a reserve policeman or his widow based upon actual salary of that policeman during the year prior to the time such policeman passed to the reserve list, or upon the salary being paid other policemen, at the time of such payment, in the same pay grade as the reserve policeman held during the year prior to the time he passed to the reserve list?"

Section 11-1821, R. C. M., 1947, as amended by Chapter 69, Laws of 1951, reads so far as pertinent, as follows:

"... (2) Upon the death of any policeman or any officer of any city or town, his surviving dependent widow, if there be such a surviving widow, shall as long as she remains his widow, be paid, from the police reserves fund, reasonable monthly payments in such amount as the trustee of the said fund shall deem proper, but in no event exceeding a sum equal to one-half ($\frac{1}{2}$) the salary such policeman or officer was receiving during the year prior to the time such policeman or officer passed to the police reserve list . . ."

The amendment to which your inquiry is directed is Chapter 45, Laws of 1953, which, so far as is pertinent, reads thus:

“ . . . (2) Upon the death of any policeman or any officer of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves fund, a sum equal to one-half ($\frac{1}{2}$) the salary such policeman or officer was receiving during the year prior to the time such policeman or officer passes to the police reserve list . . . ”

It will be noted that the primary effect of Chapter 45, *supra*, was not to provide an increase in payments to the eligible widow, but was merely to remove the discretionary power formerly lying in the trustee of the fund to make “reasonable monthly payments” not to exceed “a sum equal to one-half ($\frac{1}{2}$) the salary such policeman or officer was receiving . . . ”

The sole purpose of such statute was to relieve the intended beneficiaries from suffering and want, and if the statutes are to operate effectively, they must be construed so as to give effect to their humane purposes. Pension statutes should be liberally construed in favor of the intended beneficiaries. *Walton v. Colton* (U. S.), 19 How. 355; *Logue v. Fenning*, 29 Ap. D. C. 519; *O’Dea v. Cook*, 176 Cal. 659, 169 Pac. 366; *Price v. Society for Sav.*, 64 Comm. 362, 30 Atl. 193; *State ex rel. Holton v. Tampa*, 119 Fla. 556, 159 So. 292; *People v. Oak Park Fireman’s Pension Fund*, 220 Ill. Ap. 242; *Dahlin v. Missouri Comm. for Blind* (Mo.), 262 S. W. 420; *Yates County National Bank v. Carpenter*, 119 N. Y. 550, 23 N. E. 1108.

The general rule is that a person does not acquire a vested right to a pension and therefore the pension may be modified, the theory being that pensions are usually bounties which may be given, recalled, or withheld in the direction of the legislature. *U. S. v. Teller*, 107 U. S. 64, 2 S. Ct. 39; *Buetel v. Foreman*, 288 Ill. 106, 123 N. E. 270; *In re Snyder*, 93 Wash. 59, 160 Pac. 12; *Abbott v. Morgenthau*, 93 Fed. (2d) 242.

Montana has accepted this rule in respect to pension funds wherein the members’ contribution was compulsory. In *State ex rel. Casey v. Brewer*, 107 Mont. 550, 88 Pac. (2d) 49, the question of the rights of a member of a volunteer fire department in a pension fund was considered. The court there cited from 54 A. L. R. 943, as follows:

“The unquestioned rule is that a pension granted by the public authorities is not a contractual obligation, but a gratuitous allowance in the continuance of which the pensioner has no vested right; and that pension is accordingly terminable at the will of the grantor . . . ”

The Montana court in the later case of *Clarke v. Ireland*, 122 Mont. 191, 199 Pac. (2d) 965, held that with respect to the Teachers Retirement Act, the rights to compensation for a retired member was a vested right. The court distinguished the Brewer case (*supra*) by pointing out that payments made into the Teachers Retirement Fund by members was voluntary, whereas in the case of the Fire Department Fund, the payments were compulsory. The court said:

“The distinguishing feature between such cases is the difference between voluntary contributions to an annuity fund and compulsory contributions to a pension fund. And the test is not whether the deduction was ever paid to the member and then returned, but whether the contributor had a power to elect whether the deduction was authorized or not. If the contributor chooses to participate in the retirement program and directs that his contributions be deducted from his salary, that is as certainly a voluntary contribution as if he had actually received the money and paid it back to the state.” (Citing cases.)

Since there is no vested right to a pension such as is under discussion, it follows that the legislature has the power to modify, reduce or increase payments received by the beneficiaries of the fund. The compensation to which an eligible widow of a policeman is entitled was neither decreased nor

increased by reason of the passage of Chapter 45, Laws of 1953 (40 Am. Jur. p. 987, Sec. 33, Pensions) and, as previously stated, the sole purpose of the amendment was to remove a discretionary power previously existing in the trustee of the fund.

Based, therefore, on the foregoing reasoning, it is my opinion that:

1. The legislature has the power to increase or modify pension benefits granted under the provisions of the Police Reserve Fund.

2. Where a widow has been receiving compensation under the provisions of Section 11-1821, R. C. M., 1947, as amended by Chapter 69, Laws of 1951, she is entitled to receive as compensation a sum equal to one-half ($\frac{1}{2}$) the salary her husband was receiving during the year prior to the time he passed to the police reserve list.

3. Where a policeman passes to the reserve list prior to July 1, 1953 (the effective date of Chapter 45, Laws of 1953) and subsequently dies, the payments to the widow should be one-half ($\frac{1}{2}$) the salary her husband was receiving prior to the time he passed to the police reserve list.

Your next question is concerned with the recent amendment to Section 11-1825, R. C. M., 1947, increasing from one and one-half per centum ($1\frac{1}{2}\%$) to three per centum (3%) the monthly contribution retained from police officers on the active list. Section 1 of Chapter 54, Laws of 1953, providing for such increase reads as follows:

"Salary Deduction For Payment Of Reserve Officers. The treasurer of any incorporated city which may be hereafter subject to the provisions of this Act, shall retain from the monthly salary of all police officers upon the active list, a sum equal to three per centum (3%) of the monthly compensation paid each officer for his service as such police officer, the said monthly deduction from the salaries of such police officers, shall be paid into the fund created by the tax levy for the purpose of paying the salaries of police officers upon the reserve list."

It will be noted that it is the duty of the treasurer to retain the contribution. The failure of the treasurer to make a proper deduction may not be held to affect a pension due an employee or a beneficiary. *People v. Park Employees Annuity and Benefit Fund*, 314 Ill. App. 101, 40 N. E. (2d) 798; *Gerendasy v. Police and Fire Departments Pension Commission of City of Elizabeth*, 130 N. J. L. 226, 32 A. (2d) 447; *Verdecanna v. Carey*, 285 N. Y. 130, 33 N. E. (2d) 58. Where, however, the employee has passed to the reserve list, his compensation is no longer subject to deductions for the pension fund and, as previously stated, since he has qualified, he or his beneficiaries would be subject to any increases or decreases in the compensation made by the legislature.

It, therefore, follows and it is my opinion that the payments to an eligible widow of a police officer who passed to the reserve list following the effective date of Chapter 45, Laws of 1953, removing the discretionary power of the trustee to the fund, and prior to making of the increased contribution to the fund as required by Chapter 54, Laws of 1953, is entitled to receive as compensation a sum equal to one-half ($\frac{1}{2}$) the salary her husband was receiving during the year prior to the time he passed to the police reserve list.

With respect to your final inquiry, the payment to a reserve policeman or his widow is based, as stated in Section 11-1821, R. C. M., 1947, as amended, on "the salary he was receiving during the year prior to the time he passed to the police reserve list." Cases holding to the contrary are based on statutory language to the effect that the compensation paid is based on the salary attaching to the rank at the time of transfer to the reserve list. The Montana statute, being clear and explicit on this point, is not open to interpretation.