

Opinion No. 91**Firemen — Pensions —
Qualifications — Statutes
Statutory Construction**

HELD: A member of a fire department who has completed twenty years of active service but has not reached the age of fifty years as a fully paid member of the fire department, may not retire from the service and be granted his pension effective when he reaches the age of fifty.

November 19, 1956

Honorable John J. Holmes
State Auditor
State Capitol Building
Helena, Montana

Dear Mr. Holmes:

You have recently requested my opinion on the following question:

May a member of a fire department who has completed twenty years of active service with the department but has not reached the age of fifty years retire from the service and be granted his pension effective when he has reached his fiftieth birthday?

In answer to your question, reference must be made to Section 11-1925, R.C.M., 1947, as amended by Section 1, Chapter 194, Laws of 1949. This section provides in part as follows:

"Pensions To Retired Firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's 'disability and pension fund', a 'service pension' . . ."

Thus, the qualifications that a member of a Fire Department Relief Association must meet in order to qualify for a service pension after he elects to retire are:

- (1) Complete twenty years or more of Active duty, and
- (2) Attain the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed.

These two qualifications are separately stated in Section 11-1925, supra, and both conditions must be met.

To satisfy the second qualification, a member of the fire department relief association must be a fully paid member of the fire department of the city or town wherein his association has been formed at the time he attains the age of fifty (50) years. Thus, an individual fireman who elected to retire after meeting the first requirement, viz., 20 years or more of active service, but fails to meet the second requirement of Section 11-1925, supra, is not eligible to receive a service pension. This conclusion logically follows since the statute (11-1925) is clear and free of ambiguity. Our Supreme Court has stated in *Siuru v. Sell et al.*, 108 Mont. 433, 444, 91 Pac. (2d) 411, 123 A.L.R. 423, the following guide to statutory construction:

" . . . We have neither the power nor the right to read the word 'originally' or language of similar import into the statute. Our office 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted.' (Secs. 10519 and 10520, Rev. Codes; see, also, *In re Wilson's Estate*, 102 Mont., 178, 193, 56 Pac. (2d) 733, 105 A.L.R. 367.)"

To hold that a fireman may retire who has completed his twenty (20) years of active service prior to reaching the age of fifty and be eligible for a service pension when he reaches the age of fifty, would require the insertion of additional meaningful words into the statute. It would also require an interpretation which would render the second qualification for a service pension, supra, nugatory, and that the words "as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, . . ." have no effect. This I cannot do, for such action would do violence to the law and the decision in the *Siuru* case, supra, which states that in interpreting a statute one must simply ascertain and declare what is in terms of in substance contained therein, and not to insert what has been omitted, or to omit what has been inserted.

It is therefore my opinion that a member of a fire department who has completed twenty years of active service but has not reached the age of fifty years as a fully paid member of the fire department, may not retire from the service and be granted his pension effective when he reaches the age of fifty.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.