

**Opinion No. 18****Cities and Towns—Minimum Wage—Policemen and Firemen  
Employed By First and Second Class Cities—Retrospective  
Statutes**

- Held:** 1. Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957, and Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, establish a minimum wage which must be paid policemen and firemen of cities of the first and second class which includes credit for years of service prior to July 1, 1957.
2. Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957, and Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, are not in contravention of Section 13, Article XV of the Montana State Constitution as being retrospective in operation.
3. A statute is not made retrospective in operation merely because it draws upon facts antecedent to its enactment for its operation.

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June 19, 1957

Mr. John Luke McKeon  
County Attorney  
Deer Lodge County  
Anaconda, Montana

Dear Mr. McKeon:

You have requested my opinion as to whether Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957, and Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, are retrospective in operation so as to be in contravention of Section 13, Article XV of the Montana State Constitution.

Section 13, Article XV of the Montana Constitution provides:

"The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or associa-

tion of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed."

Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957 provides as follows:

"From and after July 1, 1957, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first or second class of the State of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least three hundred fifty dollars (\$350.00) per month for the first year of service, and thereafter of at least three hundred fifty dollars (\$350.00) minimum per month plus one per cent (1%) of said minimum base monthly salary three hundred fifty dollars (\$350.00) for each additional year of service up to and including the twentieth year of such additional service."

Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, provides as follows:

"That from and after July 1, 1957, there shall be paid to each duly confirmed member of the police department of cities of the first and second class of the State of Montana, a minimum wage for a daily service of eight (8) consecutive hours' work, of at least three hundred and fifty dollars (\$350.00) minimum per month for the first year of service, and thereafter of at least three hundred and fifty dollars (\$350.00) minimum per month plus one per cent (1%) of said minimum base monthly salary three hundred and fifty dollars (\$350.00) for each additional year service up to and including the twentieth year of such additional service."

Both of the above quoted statutes amend the minimum wage which must be paid to policemen and firemen employed by cities of the first and second class. In both instances the standard of pay is to be determined by adding to the amount of \$350.00 per month, 1% of \$350.00 for each year of service to said city, including years of service prior to July 1, 1957. In neither case is the statute retroactive in operation. As was stated in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 263, 229 Pac. 730:

"A statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability, in respect to transactions already past, is deemed retroactive."

It is clear from a reading of the statutes in question that the provisions regarding the minimum wage are to be effective on July 1, 1957, and in no way create a liability upon the cities for any service rendered at any time prior to such date. In other words, neither act attempts to create a liability in respect to any service performed by the policemen and firemen in past transactions with the cities.

The fact that years of service prior to 1957 are taken into consideration in determining what the minimum wage shall be does not make the laws retrospective in their operation. It is a well settled rule of law that a statute is not made retroactive merely because it draws upon facts antecedent to its enactment for its operation. *Earle v. Froedtert Grain & Malting Co.*, 197 Wn. 341, 85 Pac. (2d) 264; *Lewis v. Fidelity & Deposit Company of Maryland*, 292 U.S. 559, 54 S. Ct. 848, 92 ALR 794; 82 C.J.S. 980, "Statutes", Section 412; 50 Am. Jur. 492, "Statutes", Section 476.

Based upon these considerations it is my opinion that:

1. Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957, and Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, establish a minimum wage which must be paid policemen and firemen of cities of the first and second class which includes credit for years of service prior to July 1, 1957.

2. Section 11-1932, RCM, 1947, as amended by Chapter 62, Laws of 1957, and Section 11-1832, RCM, 1947, as amended by Chapter 28, Laws of 1957, are not in contravention of Section 13, Article XV of the Montana State Constitution as being retrospective in operation.

3. A statute is not made retrospective in operation merely because it draws upon facts antecedent to its enactment for its operation.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General