

**Opinion No. 11**

**CITIES AND TOWNS; Police Departments; Pension funds, police officer who resigns not entitled to withdraw contributions to—Sections 11-1825 and 11-1830, Revised Codes of Montana, 1947.**

**Held: Police officer who resigns from city police force is not entitled to withdraw his contribution from the Police Pension Fund.**

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May 16, 1961

Mr. Albert E. Leuthold  
State Examiner  
State Capitol Building  
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion on the following question:

May a police officer, upon resigning, withdraw from the Police Pension Fund the amount of money that he has contributed through the payroll deduction?

Opinion No. 168, Volume 21, Official Opinions of the Attorney General, dealt with an analogous question relating to firemen, and whether or not the Fire Department Relief Association could refund the three per cent deduction to a member whose employment with the fire department terminated before application for any benefits was made. The Honorable R. V. Bottomly, then Attorney General of the State of Montana, ruled that there was no legislative authority to make payments from the fund except to those firemen who had qualified under the applicable code sections.

The same is true in the instant case. Section 11-1830, Revised Codes of Montana, 1947, provides:

"Said fund shall not be used for any purpose whatsoever, other than the payment to members of the police department on the reserve list of the amounts to which they are entitled under the provisions of this act."

Section 11-1825, RCM, 1947, provides in part:

"The treasurer . . . 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 services 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 purpose of paying the salaries of police officers upon the reserve list."

Nowhere in the Metropolitan Police Law is any provision found which would indicate that the deductions from the active police officers' salaries were to be used for any other purpose than paying members on the police reserve list. The law on this point is clear and the fund is so limited. One must satisfy the requirements of the Metropolitan Police Law in order to be entitled to realize the benefits thereof. Nowhere in this Act is it contemplated that one resigning from the police force before he has attained the qualifications to enable him to pass to the police reserves would be eligible either to recover his three per cent monthly contribution or to draw any retirement benefits considered by the Metropolitan Police Law.

The case of *Clarke v. Reis*, 25 Pac. 759 (California, 1891), is on all fours with the problem presented here. It was decided under a statute quite analogous to Section 11-1830, RCM, 1947. The California statute provided that \$2.00 per month was to be withheld from the monthly payment of each police officer and paid into a life and insurance fund. Representatives of deceased policemen and injured and sick policemen could draw from the fund in certain specified amounts. The claimant in that case did not qualify under the statute for eligibility to draw from the fund when he terminated his service, and further, was not entitled to withdraw the moneys that he had contributed to the fund, as the statute set up the only contingencies under which one could withdraw any of the money.

As stated in 62 CJS, *Municipal Corporations*, § 588 (b), page 1194:

"The fact that deductions are made from a policeman's salary for the pension fund does not give the policeman a vested right in his contributions to the fund but only the right to receive a pension on such terms and contingencies as the pension system may provide, and he is not entitled to a refund of his contributions where he is separated from the police force under circumstances not entitling him to a pension."

It is therefore my opinion that the board of trustees cannot legally refund the three per cent deductions to a member whose employment with the police department terminates before he is eligible to be transferred to the reserve list as contemplated by the Metropolitan Police law.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General