

## Opinion No. 6

**PUBLIC EMPLOYEES RETIREMENT SYSTEM; Participation by Members of Armed Forces Reserve—SECTION 68-1316, REVISED CODES OF MONTANA, 1947—SECTION 68-203, (h), REVISED CODES OF MONTANA, 1947—CHAPTER 181, LAWS OF 1961.**

**Held:** Civilian employees of the Montana National Guard eligible for membership in Public Employees Retirement System under Section 68-1316, Revised Codes of Montana, as amended by Chapter 181, Laws of 1961, are not rendered ineligible by membership and participation in an Armed Forces Reserve retirement or pension program, credit for which is earned by service other than that rendered as such civilian employee.

May 12, 1961

General S. H. Mitchell  
The Adjutant General  
P. O. Box 1157  
Helena, Montana

Dear General Mitchell:

Your letter of April 4, 1961, presents a question on the interpretation of Section 68-203, Subsection (h), Revised Codes of Montana, 1947.

The pertinent part of that statute reads as follows:

"The following employees shall not become members of the retirement system:

\* \* \* \*

"(h) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances. . ."

You ask whether civilian technicians who are employed by the Montana National Guard and otherwise eligible under Section 68-1316, Revised Codes of Montana, 1947, as amended by Chapter 181 of the Laws of 1961, are ineligible under the above quoted statute by reason of their membership and participation in an Armed Forces Reserve pension program.

Section 68-1316, as amended, *supra*, provides that all employees of the Montana Army and Air National Guard shall become members save certain of such employees who may elect not to become members.

The language of this amendment is as follows:

"(b) From and after July 1, 1961, all employees of the Montana army and air national guard shall become members on the first day of employment, except those employees who are in state service on July 1, 1961, or prior thereto, who have filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may at any time, while he is an employee, file with the board of administration an election to become a member and receive credit for prior service under the provisions of Section 68-501 (h), Replacement Volume 4, Revised Codes of Montana, 1947, as amended by Chapter 92, Session Laws of 1955, of this act."

The subject class is then eligible unless Section 68-203, subsection (h), *supra*, as amended, makes them ineligible.

Ineligibility of such employees does not exist under said subsection (h) unless **each** of the following conditions is met:

1. Membership in any other retirement or pension system supported by public funds.
2. Receipt of credit in such other system for service rendered as a state employee.

The first condition is met by the class of persons who are the subject of your inquiry by their participation in an Armed Forces Reserve retirement plan.

A reading of the federal statutes on Armed Forces Reserve retirement, and application thereof to the situation you have outlined reveals that no membership in any Armed Forces Reserve pension or retirement program is obtained by securing employment as a technician with the Montana National Guard. Membership in Armed Forces Reserve retirement may be obtained by enlistment in a Reserve component, but enlistment in such component and participation in its retirement may be accomplished by persons not employees of the Guard. An individual employed by the Guard and also a member of a Reserve component gains no retirement credit as a result of such combination in excess of the sum of his credit for civilian service and his credit for military service. It is presumed that subsequent to July 1, 1961, full compliance with the law providing a forty hour work week for salaried state employees will be had and that service to the Armed Forces Reserve will be rendered outside of that requirement.

It would thus appear that no credit for Reserve retirement is obtained by a state employee of the subject class for service rendered as a civilian employee, and that no credit for military service, other than

provided by special statutes taking such service out of the operation of Section 68-203 (h), *supra*, will be credited toward Montana's Public Employees' Retirement plan.

It is my opinion that civilian technicians employed by the Montana National Guard and otherwise eligible for membership in our Public Employees Retirement System are not rendered ineligible by their membership and participation in the Armed Forces Reserve pension program, credit for which Reserve pension is earned by service other than that rendered as such civilian technician.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General