

VOLUME NO. 35

Opinion No. 4

GAME WARDENS' RETIREMENT SYSTEM — Increased contributions to system; contractual obligations of employer. Sections 68-1409, 68-1410 and 68-1413, R.C.M. 1947.

- HELD:**
- 1. Contributions of present members to the Game Wardens' Retirement System cannot be increased without a corresponding increase in benefits which will accrue to members at retirement.**
 - 2. Contributions by the employer to the Game Wardens' Retirement System may be increased without a corresponding increase in benefits which will accrue to members at retirement.**

January 26, 1973

Mr. Lawrence P. Nachtsheim, Administrator
Public Employees' Retirement System
1712 Ninth Avenue
Helena, Montana 59601

Dear Mr. Nachtsheim:

This is in response to your letter requesting my review of the position of the Game Wardens' Retirement System board of administration regarding funding of the game wardens' retirement system.

You inform me that a question regarding future funding of the game wardens' retirement system was raised by the actuarial valuation of the system in 1970. At that time the consulting actuary concluded that "a total employer contribution of 16.05% of salaries is a breaking point, below which the rate is inadequate to maintain a sound system." The board has determined that any increased contribution needed to maintain a sound retirement system must come from the employer and not the employee. This position is based on the principle that the relationship between the state and its game wardens regarding benefits and employee contributions under the statutes governing the game wardens' retirement system is contractual, and that employee contributions cannot be increased without also increasing benefits.

The statutes governing service retirement benefits and employee contributions are as follows.

Section 68-1413, Revised Codes of Montana, 1947, provides:

Upon retirement from service a service retirement allowance shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half (1/2) of his average final salary with twenty-five (25) years' service.

Section 68-1409, R.C.M. 1947, relating to employee contributions, provides:

Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

In order for the game wardens' retirement system to be maintained as a sound system the consulting actuary has determined that additional contributions must be made to the system to maintain the present level of benefits. As noted before, the board has taken the position that employee contributions cannot be increased in order to maintain the same level of benefits. The question thus becomes whether the state of Montana is obligated by contract to maintain at least the present level of service retirement benefits to those who are presently members of the game wardens' retirement system without raising the percentage contribution by members.

The Supreme Court of Montana has considered the relationship which exists between a retirement system and its members. In **Clarke v. Ireland**, 122

Mont. 191, 199 P.2d 965, the court held that a teacher who had *voluntarily* joined the teachers' retirement system and made contributions thereto could not be deprived of interest on her contributions upon withdrawal, notwithstanding statutory amendments disallowing such interest. The court found that a contractual relationship existed between the system and the member. Rights of the contributor member were dependent upon statutes in force at the time the relationship was entered into. The court found that to deprive a member of rights existing under the statutes in effect at the time she joined the system was to impair a contract in violation of Article I, section 10, of the Constitution of the United States and Article III, section 11, of the Constitution of Montana.

A later case decided by our court, **State ex rel. Evans v. Fire Department Relief Association**, 138 Mont. 172, 355 P.2d 670, dealt with the contractual relationship between a *compulsory* retirement system and one of its members. In **Evans**, unlike **Clarke**, the court drew no distinction between a system where the membership is voluntary and a system which makes membership compulsory for those it benefits. Thus, this latest opinion of the Supreme Court of Montana would appear to prohibit the legislature from raising the percentage contribution of members of the game wardens' retirement system without also raising retirement benefits.

From the above it would appear that the state would be obligated to provide a service retirement allowance commensurate with section 68-1413, *supra*, at the time of retirement of a present member of the game wardens' retirement system. The state may either make provision for this contingency by increasing its contribution to the system now or by supplying the difference in the future between what the system can pay and what it is obligated to pay. The employee contribution provided for in section 68-1409, *supra*, cannot be increased without a corresponding increase in benefits which will accrue to members at retirement. The state, through legislation, may increase the employer contribution to the system, as specified in section 68-1410, R.C.M. 1947, without increasing benefits.

THEREFORE, IT IS MY OPINION:

1. Employee contributions to the Game Wardens' Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased.
2. The state, through legislation, may increase the employer contributions to the Game Wardens' Retirement System without any increase in benefits which will accrue to members at retirement.

Very truly yours,

ROBERT L. WOODAHL
Attorney General