

VOLUME NO. 35

Opinion No. 51

COUNTIES — Contracts, union employees, health and pension provisions for; **COUNTY COMMISSIONER** — County employee contracts, union health and pension trust provisions, right to contract for; **INSURANCE** — Group insurance, county employees, county contribution; **PUBLIC EMPLOYEES** — Union health and pension trusts, right to make individual contributions; **PUBLIC EMPLOYEES RETIREMENT SYSTEM** — Benefits of, limited to one system supported by public funds. Sections 11-1024 and 68-1602, R.C.M. 1947.

- HELD:**
1. A board of county commissioners does not have the discretionary authority to pay in excess of the statutorily prescribed \$10.00 per month toward the premiums of group insurance entered into for each county employee pursuant to section 11-1024, R.C.M. 1947.
 2. A county must remit union employees' benefits in lieu of wages to the union trust to which employees assign those benefits instead of paying them to the employees as wages.
 3. A county, as employer, may enter into a valid contract with an employees' union, or individual members thereof, to provide for assignment in lieu of wages to the union's health and welfare trust and pension trust.
 4. A county, as employer, is prohibited by section 68-1602 (8), R.C.M. 1947, from making a contribution to both P.E.R.S. and a private union pension trust.
 5. Unionized county employees may make individual contribution to private union pension trust by assignment of benefits due them even though the county made contribution to P.E.R.S. for county employees.

December 27, 1973

Mr. Lawrence G. Stimatz
Silver Bow County Attorney
155 West Granite Street
Butte, Montana 59701

Dear Mr. Stimatz:

You have requested my opinion concerning the health and pension provisions of the contract between Silver Bow County and Butte Teamsters Local Union No. 2, which was executed and became effective July 1, 1971, and will continue in effect until June 30, 1974.

Your questions may be stated as follows:

1. Do the Silver Bow county commissioners have the authority to enter into a contract calling for payment by the county in excess of \$10.00 per month for health and welfare benefits for county employees, as set forth in section 11-1024, R.C.M. 1947?
2. Are the provisions in Articles IV and X of the contract dealing with the payment of health and welfare contributions valid?
3. May Silver Bow County, as employer, enter into a valid contract with Butte Teamsters Union, Local No. 2, or the individual members thereof, to provide for an assignment in lieu of wages to the Western Conference of Teamsters pension trust fund?
4. Are the provisions in Articles IV and XI of the contract dealing with the payment to the Western Conference of Teamsters pension trust valid?
5. Is Silver Bow County, as employer, prohibited by section 68-1602 (8), R.C.M. 1947, from making a contribution to P.E.R.S. and the private pension fund of the Western Conference of Teamsters pension trust fund?

Section 11-1024, Revised Codes of Montana, 1947, states in pertinent part:

All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (2/3) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and **governing bodies pay as part of the officers and employees salary ten dollars (\$10) per month for each officer and employee ...** (Emphasis supplied)

It is clear that the legislature has established the amount of the county's contribution toward such group insurance program at \$10.00 per month for each employee. In 33 **Opinions of the Attorney General**, no. 14, when confronted with basically the same question, I held that the board of county commissioners does not have the discretionary power to pay in excess of the statutorily prescribed amount for such premiums. It may be noted, however, that at the time of that official opinion the statutory maximum contribution for the county was fixed at \$7.50 per month for each employee, and now that amount has risen to \$10.00 per month for each employee.

It is, therefore, my opinion, that the Silver Bow county commissioners have no authority to enter into a contract calling for payment **by the county** in excess of \$10.00 per month for health and welfare benefits for county employees.

Your second question asks my opinion concerning the validity of Articles IV and X of the contract which deal with the payment of health and welfare

contributions. Article IV sets forth the increasing wage rates for the three years of the contract. Since the wage rates are increased on July first of each year of the contract, I shall use but one year, July 1, 1971 to July 1, 1972, for the sake of example in response to your question. My response is, of course, applicable to the other two years of the contract as well.

Article IV of the contract states in pertinent part:

(a) The Minimum rate for members of the Union shall be as follows:

Effective July 1, 197[1] — all Teamsters \$[35.25] per day, plus:

The following **payments** which are **in lieu of wages**:

(1) \$[51.09] per month to be paid into the Montana Teamsters Employers Trust. **This is to include the County contribution of \$10.00 per month, for Health and Welfare. \$[41.09] in lieu of wages.** ... (Emphasis supplied)

The general tenor of your letter seems to imply that these monthly payments of \$[51.09] made into the Montana Teamsters Employers Trust are totally contributed by the county and are, therefore, beyond the \$10.00 monthly limitation of section 11-1024, R.C.M. 1947, supra.

After thoroughly reviewing the contract, it is my opinion that the county's only contribution to the Montana Teamsters Employers Trust under Article IV, supra, is the \$10.00 contribution mentioned in Article IV, supra. As the contract states, \$[51.09] per month is to be paid into the trust. Ten dollars (\$10.00) of that amount is to be contributed directly by the county pursuant to section 11-1024, supra. The balance of \$[41.09] is a payment made in lieu of wages to the employee. In other words, the \$[41.09] payment made to the trust fund is not a contribution by the county, but is an earned benefit which the employee wishes to have assigned directly to the trust fund rather than to receive as wages.

Article X of the contract states in pertinent part:

(a) Health and Welfare

The Employer shall contribute the following sum, monthly, for each qualified employee covered by this Agreement, who is on the payroll of the Employer, at any time during such month:

Effective July 1, '71, \$51.09

Effective July 1, '72, \$55.42

Effective July 1, '73, \$59.75

The Employer agrees to remit said contribution on or before the 10th day of each month to the "Montana Teamsters Employers Trust" or its Successor, in payment of Health and Welfare benefits provided by such Health and Welfare Plan.

These contributions are in lieu of wages, and subject to any ruling on the matter from the Attorney General which will then be attached as an addendum to this contract. ... (Emphasis supplied)

The contract provides that the monthly contributions of \$51.09, \$55.42 and \$59.75, which include the \$10.00 contribution by the county under section 11-1024, supra, and Article IV, supra, be paid by the employees' assignment of those sums to the Montana Teamsters Employers Trust for a health and welfare plan instead of the county's paying those sums as additional wages per month per employee.

The county is clearly bound to make its \$10.00 contribution and to pay the employees' assigned balances of \$41.09, \$45.42, or \$49.75 to the trust per month per employee, instead of paying those sums to the employees as wages. I find nothing unlawful about these provisions. It is my opinion, therefore, that Articles IV and X are valid.

Your third question is whether Silver Bow County may enter into a valid contract with the teamsters union, or its individual members, to provide for an assignment of employees' benefits to the teamsters' pension trust fund in lieu of wages.

My research reveals no legislation presently in this state that specifically authorizes a governmental agency or county to pay private pension trusts. I find nothing, however, to prohibit a governmental agency or county from making payment of a certain sum in lieu of wages to a private pension trust at the request and with the consent of the employee. The governmental agency or county may apparently then make the remittance direct to the union pension trust fund and that amount would not be included in the gross taxable income of the employee. The employee would, of course, be taxed on his contributions made to the union pension plan at the time he retires and starts receiving payments from the plan. It is my opinion, therefore, that Silver Bow County, as employer, may enter into a valid contract with the Butte Teamsters Union, Local No. 2, or its individual members, to provide for an assignment in lieu of wages to the Western Conference of Teamsters pension trust fund.

Your fourth question asks whether the county's payments to the Western Conference of Teamsters pension trust, as set forth in Articles IV and XI, are valid.

Article IV provides in pertinent part:

The Minimum rate for members of the Union shall be as follows:

Effective July 1, 197[1], — all Teamsters \$[35.20] per day, plus:

The following payments which are **in lieu of wages**:

(2) \$[43.25] per month to be paid into the Western Conference of Teamsters Pension Trust. **[\$43.25] in lieu of wages.** ... (Emphasis supplied)

Article XI provides in pertinent part:

The Employer shall contribute to the Western Conference of Teamsters Pension Trust Fund, the following sum, monthly, for each qualified employee covered by this Agreement who is on the payroll of the Employer, at any time during such month:

Effective July 1, 1971, 25¢ per hour, but not to exceed \$43.25, per month.

Effective July 1, 1972, 27½¢ per hour, but not to exceed \$47.58, per month.

Effective July 1, 1973, 30¢ per hour, but not to exceed \$51.91, per month.

The Employer agrees to remit these monies to the appropriate area administrative office, on or before the 10th day of each month.

These contributions are in lieu of wages, and subject to any ruling on this matter from the Attorney General which will then be attached as an addendum to this contract. (Emphasis supplied)

The most important terminology of Articles IV and XI is the phrase "in lieu of wages". As with the health and welfare payments discussed above, the monthly payments required by Articles IV and XI are made to the Western Conference of Teamsters pension trust fund instead of to the employees as wages. The employees have apparently assigned those sums specified in Articles IV and XI, supra, to the union's private pension trust. My research reveals no law prohibiting this practice in Montana. It is, therefore, my opinion that the provisions of Articles IV and XI are valid.

Your fifth question is whether section 68-1602 (8), R.C.M. 1947, prohibits Silver Bow County, as employer, from making a contribution to P.E.R.S. and the private pension fund of the Western Conference of Teamsters pension trust fund.

Section 68-1602 (8) provides in pertinent part:

The following persons shall not become members of the [public employees] retirement system:

(8) 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; ...

Section 68-1602 (8), supra, prevents a public employee from receiving credit for the same employment from two (2) retirement systems supported by public funds. Articles IV and XI of the contract, which provide for payments to the teamsters private pension trust plan, do not mention the county's contributing to the plan. As stated before, the monthly payments made through Articles IV and XI are made "in lieu of wages". The teamsters seemingly have assigned those sums directly to the union's private fund in lieu of those sums being paid to them as wages. The payments to the private trust fund, then, come from the employees themselves and not from the county, even though the money is remitted directly by the county to the trust fund. Since the teamsters pension trust payments are not made "out of the county's own pocket," so to speak, the teamsters apparently are not receiving credit in two (2) retirement systems supported by public funds, which is prohibited by section 68-1602 (8), supra.

Section 68-1602 (8), R.C.M. 1947, does not prohibit Silver Bow County from making its contribution to P.E.R.S. on behalf of the teamsters, and the teamsters themselves from making a contribution, by their assignment in lieu of wages, to the Western Conference of Teamsters pension trust fund.

THEREFORE, IT IS MY OPINION:

1. The Silver Bow county commissioners have no authority to pay in excess of \$10.00 per month toward the premiums of group insurance entered into for each county employee pursuant to section 11-1024, R.C.M. 1947.
2. Silver Bow County must remit union employees' benefits in lieu of wages to the union trust to which employees assign those benefits, instead of paying the employees as wages.
3. Silver Bow County, as employer, may enter into a valid contract with the Butte Teamsters Union, Local No. 2, or its individual members, to provide for an assignment in lieu of wages to the union's health and welfare trust and pension trust.
4. Silver Bow County, as employer, is prohibited by section 68-1602 (8), R.C.M. 1947, from making a contribution to both P.E.R.S. and a private union pension trust.
5. Unionized Silver Bow county employees may make individual contribution to private union pension trust by assignment of benefits due them, even though the county made a contribution to P.E.R.S. for county employees.

Very truly yours,

ROBERT L. WOODAHL
Attorney General