

VOLUME NO. 35**Opinion No. 71**

COUNTIES — Fire district employees; vacation, sick leave and insurance benefits; FIRE DISTRICTS — County employees; vacation, sick leave and insurance benefits. Sections 11-1024, 11-1908, 11-2008, 11-2010, 41-1121, and 59-1001, et seq., R.C.M. 1947.

- HELD:**
- 1. Salaried employees of a fire district are county employees.**
 - 2. Fire district employees are entitled to vacation and sick leave benefits under section 59-1001, et seq., R.C.M. 1947.**
 - 3. Fire district employees are entitled to group insurance benefits under section 11-1024, R.C.M. 1947.**

4. Fire district employees are subject to the provisions of section 41-1121, R.C.M. 1947, regarding hours of employment.

5. Fire district employees have tenure rights consistent with tenure rights of other paid fire companies.

6. Salaried employees of a fire district are not volunteers under section 11-1908, R.C.M. 1947.

February 21, 1974

Mr. Robert L. Deschamps III
Missoula County Attorney
County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following issues concernig the Missoula Rural Fire Distrit:

1. Are salaried employees of the Missoula Fire District employees of Missoula County?
2. Are Missoula Fire District employees covered under section 59-1001, R.C.M. 1947, through section 59-1009, R.C.M. 1947, in regard to vacations and sick leave?
3. Are Missoula Fire District employees covered by group insurance benefits under section 11-1024, R.C.M. 1947?
4. Does section 41-1121, R.C.M. 1947, regarding hours of employment apply to Missoula Fire District employees?
5. Do Missoula Fire District employees have any rights of tenure?
6. Does section 11-1908, R.C.M. 1947, apply to the salaried employees of the Missoula Fire District?

In order to respond to your first question concerning whether employees of a fire district are county employees, the nature and existence of a fire district must first be considered. County commissioners are statutorily authorized to establish fire districts. Section 11-2008, Revised Codes of Montana, 1947, provides in pertinent part:

- (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing ... and **may** grant the same ... (Emphasis supplied)

Thus, a fire district is a subdivision of the county, created to provide the public with fire protection. The Montana statutes relating to fire districts,

sections 11-2008 and 11-2010, R.C.M. 1947, indicate that a county controls and may supervise, either directly or indirectly, through fire district trustees, county-created fire districts. The board of county commissioners has power, under section 11-2010, R.C.M. 1947, to either contract directly to provide for fire protection or appoint trustees to govern and manage the affairs of the fire district:

(a) Whenever the **board of county commissioners** shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. ... (Emphasis supplied)

This section also provides, in part:

(b) The trustees ... shall prepare annual budgets and request special levies therefor. The budget laws relating to **county budgets**, shall, as far as applicable, apply to fire districts. (Emphasis supplied)

In effect, the trustees of a fire district act as agents of the county in performing public duties.

Further, county commissioners have the exclusive authority to levy taxes for certain purposes within the fire district. Section 11-2008, R.C.M. 1947, provides, in pertinent part:

(a) ... At the time of the annual levy of taxes the **board of county commissioners** may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor. (Emphasis supplied)

Neither the Missoula county commissioners nor the trustees of the fire district have contracted with another political unit or fire organization to provide fire protection within the Missoula Rural Fire District, thereby removing the fire district employees from county control and supervision. Rather, the trustees, appointed by the county commissioners, have purchased equipment and hired their own personnel to provide the necessary fire protection.

In addition, section 11-2008 provides that the county commissioners upon presentation of a petition may dissolve a fire district and may change fire district boundaries by division or annexation.

In an analogous situation to the question you have posed, the Montana Supreme Court recently declared that, since a school district is a subdivision and instrumentality of the state, nonteaching school district employees are employees of the state and thus entitled to vacation benefits granted to state employees. **Teamsters v. Cascade County School District #1**, 30 St. Rptr. 630, 511 P.2d 339. Fire district employees are in a similar situation.

In a letter opinion dated March 23, 1973, from my office to Mr. L.H. James Anderson, Carter county attorney, concerning the property of a volunteer fire department, I stated:

If the city has the power to establish and equip a fire department it is only logical that the same is a department of the city government under the full direction and control of the city or town council.

A similar construction is applicable to a fire district established as a subdivision and instrumentality of the county. Since the county has the authority to establish and equip a fire district, to levy taxes to fund the district, to either contract for fire protection or appoint trustees to manage the district, to otherwise govern and manage the fire district, it is only logical that full-time salaried employees of the fire district are employees of the county in the absence of an intervening employer, such as a city, town, or private fire service.

In regard to your second question, the plain, ordinary meaning of the language in sections 59-1001 through 59-1009 indicates an obvious legislative intent to provide vacation and sick leave benefits to all public employees. These statutes confer benefits upon "an employee of the state or any **county** or city thereof ..." Since fire district employees are public county employees, they are entitled to vacation and sick leave benefits as set forth in the above statutes.

Your third question relates to group insurance benefits under section 11-1024. This statute provides in 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 ... county, city and town 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)

Pursuant to this statute, fire district employees, as county employees, are eligible for group insurance benefits.

Answering your question number four, section 41-1121, R.C.M. 1947, sets forth an eight-hour working day for "... works and undertakings carried on or aided by any municipal, **county**, or state government ... except in cases of emergency when life or property are in imminent danger ..." The Missoula Rural

Fire District is an undertaking carried on by Missoula County and is subject to this statute. Furthermore, section 11-2010 (b), R.C.M. 1947, imposes a duty upon the trustees for form fire companies within the fire district:

The trustees shall ... prepare and adopt suitable by-laws; appoint and form fire companies **that shall have the same duties, exemptions, and privileges as other fire companies** ... (Emphasis supplied)

The regulations governing hours of work of paid fire departments in first and second-class cities are set forth in sections 11-1931 and 11-1934, R.C.M. 1947. Such fire departments may be construed to include "other fire companies" within the meaning of section 11-2010 (b), and the trustees of a fire district are thus authorized to adopt regulations consistent therewith.

Regarding your question number five, paid employees of a fire district have the same rights as other county employees. My research reveals no specific statute which establishes tenure rights for fire district employees. However, as noted above, fire companies established by trustees have rights and obligations consistent with the duties, exemptions, and **privileges** of other fire companies. Section 11-1903, relating to the suspension of firemen in fire departments, provides for a notice and a hearing. In addition, section 11-1904 establishes a seniority system with regard to firemen in fire departments. These rights are thus applicable to salaried employees of a fire district.

In response to your sixth question, section 11-1908, R.C.M. 1947, relating to volunteer fire companies, is not contrary to the conclusion that Missoula Rural Fire District employees are county employees. Section 11-1908, *supra*, states:

All acts and parts of acts in conflict herewith are hereby repealed; provided, that nothing herein contained shall be held or construed to affect any fire organization known as a volunteer fire company.

Full-time salaried employees of a rural fire district are not volunteers within the meaning of a volunteer fire organization. The statutes pertaining to volunteer fire companies point out this difference. Section 11-1909, R.C.M. 1947, states in pertinent part:

For the purpose of supporting volunteer fire departments in any city or town **which does not have a paid fire department** ... (Emphasis supplied)

Section 11-1936, R.C.M. 1947, provides in part:

In addition to a paid department, the city council, city commission or other governing body in cities of the second class may make provision for a volunteer fire department **in addition to the paid fire department** which said volunteer fire department shall be exempt from obligations in this act set out as applying to the paid department. Likewise shall the city commission or governing department be exempted as to compliance with this act in so far as the same may

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pertain to the said volunteer fire department by way of penalties and infringements; a volunteer being described as one who is an enrolled member of the volunteer fire department **and assists the paid fire department**; ... (Emphasis supplied)

Thus, paid employees of a fire district are not volunteers, and section 11-1908, supra, does not apply to salaried employees of the Missoula Rural Fire District.

THEREFORE, IT IS MY OPINION:

1. Salaried employees of a fire district are county employees.
2. Fire district employees are entitled to vacation and sick leave benefits under section 59-1001, et seq.
3. Fire district employees are entitled to group insurance benefits under section 11-1024.
4. Fire district employees are subject to the provisions of section 41-1121 regarding hours of employment.
5. Fire district employees have tenure rights consistent with tenure rights of other paid fire companies.
6. Salaried employees of a fire district are not volunteers under section 11-1908.

Very truly yours,
ROBERT L. WOODAHL
Attorney General