

VOLUME NO. 36

Opinion No. 30

CITIES AND TOWNS—FIREMEN, probationary; FIRE DEPARTMENT RELIEF ASSOCIATION—probationary firemen; Sections 11-1923 and 11-1932, R.C.M. 1947.

- HELD:**
- 1. A city or firemen's relief association has no authority to deduct firemen's relief association dues from the wages of a probationary fireman.**
 - 2. A probationary fireman may not willingly contribute to a firemen's relief association and thereby receive benefits from that association.**
 - 3. Probationary firemen are not entitled to the minimum wage provided by Section 11-1932, R.C.M. 1947.**

October 8, 1975

Mr. William A. Penttila, Chief
Fire Marshal Bureau
528 Sanders
Helena, Montana 59601

Dear Mr. Penttila:

You have requested my opinion on the following questions relating to probationary firemen:

1. Is it proper procedure for a city to deduct six per cent (6%) from a probationary fireman's wages and then refund that amount to him when he leaves a confirmed member of the fire department?
2. If a probationary fireman is contributing to the relief association would he be entitled to the benefits of the association?
3. Are probationary firemen entitled to the minimum wage specified by statute?

With respect to question (1), the underlying consideration is whether a city has power at all to deduct monies from a probationary fireman's wages to pay over to the relief association. The statutes offer clear guidelines in this matter. Section 11-1922, R.C.M. 1947 provides:

The confirmed members of the fire department or departments ... are hereby authorized to form themselves into a local association, to be known as the fire department relief association... (Emphasis added)

Section 11-1923, R.C.M. 1947 provides:

- (1) ... **No one serving** as a substitute or **on probation, nor a person who has not been confirmed a member of an organized fire department**, is eligible for membership in the relief association... (Emphasis added)

Plainly, probationary firemen lack both the authority to participate in forming a firemen's relief association and the qualifications for membership therein. It thus follows that a city cannot deduct relief association dues from a probationary fireman's wages.

The same reasoning automatically disposes of question (2). A city may not and therefore must not make deductions from a probationary fireman's wages to pay the relief association. Since by law he is ineligible for membership, a

probationary fireman is precluded from voluntarily contributing to the association for the purpose of securing its benefits.

Concerning question (3), section 11-1932, R.C.M. 1947 provides:

From and after July 1, 1973, there shall be paid to **each duly appointed and confirmed member of the fire department** of cities or towns of the first class of the state of Montana a minimum wage ... of at least six hundred dollars (\$600) per month for the first year of service... [T]here shall be paid to **each duly appointed and confirmed member of the fire department** of cities of the second class of the state of Montana a minimum wage ... of at least six hundred dollars (\$600) per month for the first year of service... (Emphasis added)

This statute simply contains no provisions for paying the minimum wage to firemen who are less than confirmed members of the fire department.

You have also expressed concern over Volume 33, Opinions of the Attorney General, Opinion No. 11, wherein I held in part that the time to be applied toward the 20-year requirement for retirement under section 11-1925, R.C.M. 1947 is computed from the first day that the fireman is hired. There is no conflict between that opinion and this one. All the statute requires for retirement is 20 years or more of **active duty** in the fire department. A fireman's probationary period is necessarily spent on active duty. In other words, a fireman could retire after 20 years of active duty without having been a member of the relief association for 20 years. A prescribed length of membership in the relief association is not a condition precedent to retirement; indeed, firemen are not even obligated to form a relief association under section 11-1922.

THEREFORE, IT IS MY OPINION:

1. A city or firemen's relief association has no authority to deduct firemen's relief association dues from the wages of a probationary fireman.
2. A probationary fireman may not willingly contribute to a firemen's relief association and thereby receive benefits from that association.
3. Probationary firemen are not entitled to the minimum wage provided by Section 11-1932, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General