

VOLUME NO. 36**Opinion No. 40****CITIES AND TOWNS — Firemen, salaries; FIRE DEPARTMENT RELIEF ASSOCIATION — Pensions, amount of; Section 11-1927.2, R.C.M. 1947.****HELD: Insurance premiums paid on behalf of firemen are not part of their "regular monthly salary" for purposes of computing pension benefits under section 11-1927.2(2), R.C.M. 1947.**

November 10, 1975

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

Dear Mr. Penttila:

You have requested my opinion on the following question:

Does the term "regular monthly salary", as used in section 11-1927.2(2), Revised Codes of Montana 1947, include the premiums for life and health insurance paid for by various cities as part of a fireman's monthly compensation?

Section 11-1927.2(2) provides in part:

. . . each and every fire department relief association, organized and existing under the laws of this state, shall pay to the firemen retired before July 1, 1973, or their widows and orphans, a monthly compensation of not less than one-half (1/2) the **regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city.** (Emphasis supplied)

"Salary" has been defined in this state as "a fixed compensation, made by law to be paid periodically for services, whether there be any services actually rendered or not". **Scharrenbroich v. Lewis and Clark County**, 33 Mont. 251, 257, 83 P.483 (1905).

The courts of the various jurisdictions in this country have come to differing conclusions as to whether "fringe benefits" should be included when

computing "salary". They are generally agreed however that the determining factor in each case is the statute in which the term is used.

In this state the payment of insurance premiums for firemen may be mandatory for certain cities under section 1024.1.

Cities of the first and second class, if they provide insurance for other city employees under section 11-1024 shall:

- (a) provide the same insurance to their respective fire fighters;
- (b) pay the full premium of each firefighter's insurance coverage for the fire fighter and his dependents notwithstanding the provisions of section 11-1024.

This statute's reference to 11-1024 makes the intent of that statute relevant to our inquiry. In this regard it is significant that prior to the 1974 amendment, 11-1024 said in part:

. . .and the respective administrative and governing bodies **pay as part of the officers and employees salary** ten dollars. . . (Emphasis supplied)

Today that statute reads:

. . .and the respective administrative and governing bodies shall pay for such insurance ten dollars. . .

As can be seen, the legislature deleted the language which provided that the insurance premium was to be paid as part of salary. This gives rise to the implication that the legislature no longer intends for the premium payment to be considered a part of the monthly salary.

In addition to these statutes, support can be found for this position in **Kommers v. Palagi**, 111 Mont. 293, 108 P.2d 208 (1940). There the court interpreted the term "salary or compensation" and found that it did not include the value of the residence which was furnished to the employee in addition to that person's regular salary. This ruling is particularly persuasive in this instance by virtue of the fact that there the court was interpreting "salary and compensation" rather than simply "salary". While these two terms are often used synonymously, where they are differentiated "salary" is deemed to encompass a more limited class of income.

THEREFORE, IT IS MY OPINION:

Insurance premiums paid on behalf of firemen are not part of their "regular monthly salary" for purposes of computing pension benefits under section 11-1927.2(2), R.C.M. 1947.

Very truly yours,
ROBERT L. WOODAHL
Attorney General