

VOLUME NO. 36

Opinion No. 41

FIRE DEPARTMENT RELIEF ASSOCIATION—Pensions—Pension Adjustments; Section 11-1927.2.

HELD: 1. Section 11-1927.2, R.C.M. 1947 requires the treasurer of a fire department relief association to request and the state auditor to issue from the earmarked revenue fund an amount equal to the sum total of the annual dollar difference between what the retirees or their widows and orphans received from the fund of the relief association for the fiscal year just preceding and one-half (1/2) of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding.

2. Although the provisions of Section 11-1927.2 are in conflict on the issue of whether the funds to be paid to the various fire relief associations are to be used by the associations to supplement retirees' pensions or reimburse the associations' treasuries for pension adjustments already paid out, the practical effect of that law, at least for the first few years of its operation, is to provide the associations with funds at the beginning of the fiscal year from which it can supplement the pensions of the retirees for that fiscal year.

November 20, 1975

Mr. R.G. "Rick" Tucker
Deputy Investment Commissioner
Office of the State Auditor & Ex Officio
Commissione of Insurance
State Capitol
Helena, Montana 59601

Dear Mr. Tucker:

You have requested my opinion on the following questions:

1. In determining the amount to be issued to a fire department relief association from the earmarked revenue fund, what amount does Section 11-1927.2 (2) (a) R.C.M. 1947 require to be subtracted from what the retirees or their widows and orphans received from the fund of the relief association for the fiscal year just preceding?
2. Are the funds to be paid to the various fire relief associations pursuant to Section 11-1927.2 to be used by the associations to supplement the retirees' pensions or to reimburse the associations' treasuries for funds already paid out?

Question No. 1.

Section 1927.2 (1) provides that as of January 1, 1976, each fire department relief association must pay to its firemen who have 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 the city for that year. Before this law took effect, these retirees received as a pension from the fire relief associations' funds, pursuant to Section 11-1925 and 11-1927, the larger of two hundred dollars (\$200) per month or one-half their last monthly salary. Section 11-1927.2 labels the amount which it raises a retiree's pension as a "pension adjustment". The funds for the pension adjustments are to be derived from a one and one-half percent (1 1/2%) tax on the fire portion of direct insurance premiums received during the calendar year of 1975 and succeeding years. The tax is to be collected by the state auditor and to be placed in an earmarked revenue fund.

Your first question concerns what amount should be transferred by the state auditor from the earmarked revenue fund. The method of transferring the monies to the various fire department relief association treasuries is set out in Section 11-1927.2 (2) (a) and (b) as follows:

(a) At the beginning of each fiscal year the treasurer of the fire department relief association legally existing in every city or town shall request and the state auditor shall issue from the earmarked revenue fund, and deliver to the treasurer of every city or town, an amount certified to be equal to the sum total of the annual dollar difference between what the retirees or their widows and orphans received from the fund of the relief association and one-half (1/2) of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding.

(b) The treasurer of each city or town receiving the funds shall immediately disburse them to the treasurer of the respective relief association.

To determine the amount that should be transferred from the earmarked revenue fund at the beginning of the fiscal year, the amount which the auditor is to subtract from one-half (1/2) of the sum paid by the respective city or town to the position of a confirmed active fireman for the previous fiscal year is "what the retirees or their widows and orphans received from the funds of the relief association ..." Use of the past-tense word "received" indicates an amount already received rather than an amount to be received. For that reason I have concluded the phrase "for the fiscal year just preceding" is meant to modify the clause "what the retirees or their widows and orphans received from the fund of the relief association". Theoretically then, the intent of section 11-1927.2 (2) (a) is to reimburse the relief associations for all pension adjustment payments made during the past fiscal year.

Question No. 2.

In your second question you ask whether the funds to be paid to the various relief associations are to be used by the associations to supplement retirees' pensions or to reimburse the various associations' treasuries for funds already paid out under Section 11-1927.2.

In answering your previous question I indicated that the purpose of Section 11-1927.2 (2) (a) is "theoretically" to reimburse the various fire relief associations for funds already paid in the form of pension adjustments. Use of the word "theoretically" was intentional here because I find that the practical effect of the bill, at least for the first few years of its operation, is to provide the relief associations with advance funding at the beginning of the fiscal year from which they can supplement the pensions of the retirees for that year. This construction is confirmed by 11-1927.2 (2) (c), which provides:

The treasurer of each relief association shall utilize these funds to **supplement** the monthly pension of retirees or their widows and orphans to an amount equal to one-half (1/2) of the salary that was paid to the position of a confirmed active fireman in said city or town for the preceding year. (Emphasis supplied)

Subsection (2) (a) provides that the relief association is to request and the auditor is to pay monies from the earmarked revenue fund at the beginning of the fiscal year. The effective date of the act is July 1, 1975. Therefore, the treasurers of the various relief associations were supposed to request and the auditor was supposed to pay as soon as possible in fiscal year 1975-1976 the annual dollar difference between what the retirees or their widows and orphans received from the funds of the association during the fiscal year 1974-1975 and one-half (1/2) of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year 1974-1975. Because no pension adjustment funds were paid out during fiscal year 1974-1975, the payment to be made during the fiscal year 1975-1976 is in effect a prepayment from which pension adjustment payments for the fiscal year 1975-1976 may be made. Thus, the practical effect is to provide funds for the relief associations to supplement the monthly pensions before they actually must expend these adjustment payments, even though the amount to be paid would indicate that the payment made is in the nature of the reimbursement for funds expended during the previous fiscal year.

I am aware that in the fiscal year 1976-1977 and all succeeding fiscal years the amount to be paid to the retirees in pension adjustments during the fiscal year will exceed the amount paid to the relief association at the beginning of the fiscal year if the salary of a confirmed active fireman is raised for that fiscal year. This would require the relief association to pay a certain portion of the pension adjustments from its own funds.

This situation could cause a hardship to the various relief associations by deferring a portion of their funds from long-term investments. However, I have also noted that the relief associations will be paid during the fiscal year 1975-1976 substantially in excess of their pension adjustment payments for that year because the retirees will receive pension adjustment payments only for the period January through June. Because Section 11-1927.2 provides for the reduction in the fire premium tax only upon the decease of retirees, it is my opinion that you should not reduce the payment for the 1976-1977 fiscal year to compensate for the balance of earmarked revenue funds remaining in the various

relief associations' treasuries at the end of fiscal year 1975-1976. This should prevent depletion of relief association investments during the fiscal year 1975-1976 and perhaps for several succeeding fiscal years.

THEREFORE, IT IS MY OPINION:

1. Section 11-1927.2, R.C.M. 1947 requires the treasurer of a fire department relief association to request and the state auditor to issue from the earmarked revenue fund an amount equal to the sum total of the annual dollar difference between what the retirees or their widows and orphans received from the fund of the relief association for the fiscal year just preceding and one-half (1/2) of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding.
2. Although the provisions of Section 11-1927.2 are in conflict on the issue of whether the funds to be paid to the various fire relief associations are to be used by the associations to supplement retirees' pensions or reimburse the associations' treasuries for pension adjustments already paid out, the practical effect of that law, at least for the first few years of its operation, is to provide the associations with funds at the beginning of the fiscal year from which it can supplement the pensions of the retirees for that fiscal year.

Very truly yours,

ROBERT L. WOODAHL
Attorney General