

VOLUME NO. 36**Opinion No. 46****STATE EMPLOYEES — Wage and salary plan, Longevity pay; House Joint Resolution No. 37.**

HELD: The longevity provisions of House Joint Resolution No. 37 would accrue to the benefit of a person who had been employed by the State of Montana for a continuous period of twenty years but who had been terminated for a period of one year and then rehired for a period of at least two years prior to the enactment of the statewide wage and salary plan for public employees if his termination was required to achieve a necessary reduction in force and he subsequently accepted re-employment with the State when a bona fide offer of employment was made.

December 29, 1975

Honorable Representative Robert L. Marks
Assistant Minority Leader
Clancy, Montana 59634

Dear Representative Marks:

You have requested my opinion on the following question relating to House Joint Resolution No. 37, enacted by the Forty-Fourth Legislative Assembly:

Whether the longevity provisions of House Joint Resolution No. 37 would accrue to the benefit of a person who had been employed by the State of Montana for a continuous period of twenty years but who had been terminated for a period of one year and then rehired for a period of at least two years prior to the enactment of the statewide wage and salary plan for public employees?

A wage and salary plan for state employees, consisting of a matrix of pay classifications, grades and salaries, and of cost of living adjustments, was submitted to the Forty-Fourth Legislative Assembly for approval pursuant to the directive contained in Section 6, Chapter 440, Laws of 1973, which provided:

The department [of administration] shall develop a wage and salary plan for presentation to the 1975 Legislature, the wage and salary plan shall be integrated with the personnel classification plan to insure that positions within classes are paid at similar rates of pay after considering different rates of pay that may result from merit increases and years of service.

This plan, with modifications, was adopted by the 1975 Legislative Assembly in the form of House Joint Resolution No. 37. H.J.R. No. 37 also contains a longevity pay provision that was amended into the resolution by the Senate Committee on Claims and Finance, upon the advice of the Department of Administration, and provides:

In addition to the salary as determined above, **each classified employee who has completed at least five (5) years of uninterrupted state service** shall receive the amount obtained by multiplying the larger of ten dollars (\$10) per month or ten percent (10%) of the difference between the base salary for his grade and step and the base salary for the corresponding step in the next highest grade by the number of completed contiguous five (5) year periods of uninterrupted service he has with the state. **Service to the state shall not be considered to be interrupted by military service or leaves of absence not exceeding three months.** (Emphasis added)

Generally, joint resolutions will be construed by use of the accepted rules of statutory construction [*Gildroy v. Anderson*, 162 Mont. 26, 29-30, 507 P.2d 1069 (1973)] since it is a form of legislative expression. 1A *Sutherland Statutory Construction*, §29.08, p. 341 (4th Ed. 1972).

In this regard, if there is room for two constructions, both equally reasonable, the court must adopt the construction which will give effect to the legislative purpose or object of the act. *State ex rel. Board of County Commissioners v. District Court of Second Judicial District in and for Silver Bow County*, 62 Mont. 275, 279, 204 P. 650 (1922). Stated in slightly different form, courts will defer to the legislature's manifested determinations of principle and policy to the extent they can be ascertained and are relevant to the problem at hand. 2A *Sutherland Statutory Construction*, §45.09, p. 30 (4th Ed. 1972).

On its face H.J.R. No. 37 requires all state service for longevity benefit purposes to have been "uninterrupted" except that "leaves of absence not exceeding three months" and "military service" will not be considered as an interruption in service.

The Department of Administration has interpreted H.J.R. No. 37, promulgated rules, and adopted a method for computing accumulated longevity time, to wit:

Rule 7.30: COMPUTING LONGEVITY TIME. (a) To earn one year of longevity time, an employee must have been in a pay status for 2,080 regular hours. (b) **To be eligible for retroactive longevity pay**, an

employee must have accumulated at least 10,400 regular pay status hours before the end of the retroactive period. ... 2 Management Memorandum No. 4B (5-15-75) (Emphasis added)

Rule 7.40, 2 Management Memorandum No. 4B (5-15-75), provides that to be eligible for longevity benefits the regular pay statute hours accumulated by a state employee must have been acquired by employment that was continuous and uninterrupted...with the following exceptions:

Rule 7.41: MILITARY LEAVE REGULATIONS. (a) The allowable break in service without pay for military service shall be limited to a maximum of 1,800 calendar days. (b) To be eligible for the military leave break in service, the employee must have entered the military service within 30-working days from the date of termination from State service and must have applied to return to State service within 90-working days from the date of discharge from military service. (c) Time served with the military shall NOT be considered for the purposes of determining longevity time. (d) Agencies are required to obtain from an employee claiming military leave sufficient documentation to substantiate the employee's eligibility.

Rule 7.42: LEAVE OF ABSENCE REGULATIONS. (a) Leave of absences without pay not exceeding 60-consecutive working days taken by an employee must be documented and approved by an appropriate administrative officer. (b) More than one leave of absence may be allowed providing that the above criterion has been satisfied for each. (c) Time allowed for leave of absences shall NOT be included in determining longevity time.

Rule 7.43: ALLOWABLE ABSENCES WITHOUT PAY. (a) For the purposes of determining longevity time, an employee may be absent without pay for up to 260-consecutive pay status days providing that the employee was not terminated by the State. This situation does not constitute a break in service but the time for which no pay was received shall NOT be considered in determining the employee's longevity time. (b) Prior to July 1, 1973, an employee may have terminated State employment and subsequently re-entered State employment without a break in service if the hours of vacation leave received as a lump sum payment at the time of termination is sufficient to cover the working days involved in the interim.

Rule 7.44: LAYOFF PERIODS. Employees who have been laid-off by the State as required to achieve necessary reductions in the work force will, even if terminated, be considered to have been continuously employed during the lay-off period IF the employee IMMEDIATELY accepts re-employment with the State when a bona fide offer of re-employment is made to the employee.

Rule 7.45: ALLOWANCE OF MINOR ABSENCES WITHOUT PAY. Employees scheduled to work full-time who are absent without pay shall be granted the full 80-hours for a pay period providing that the hours

absent without pay in that payroll period to not exceed 40 hours. If the number of hours absent without pay exceeds 40 hours, the ENTIRE time absent shall be excluded in accumulating eligible longevity time.

Rule 7.46: EMPLOYEES UNDER ACADEMIC CONTRACTS. (a) State teachers who are guaranteed employment for an academic year (usually nine months) will be considered as continuously employed (bridging the interim between successive academic periods) IF they re-enter State service when requested to do so by the State. (b) Full-time persons working in this capacity are to be considered employed for an 8-hour day for the period worked, with no exclusions for school holidays and vacations. Part-time teachers are to be credited only with hours actually worked.

It is fairly obvious that the legislature intended to reward public employees for lengthy service and experience in government and to encourage career service by providing a longevity pay increment. This intention conforms to the accepted meaning of the phrase "longevity pay", to wit: Extra compensation for uninterrupted and lengthy service [**Blacks Law Dictionary**, Revised Fourth Edition 1972, p. 1093].

Furthermore, while committee minutes, floor debate and the Senate and House Journal are silent as to what was intended by the longevity provisions, the drafters of this legislation, the Department of Administration, clearly intended that these benefits would inure to employees with at least five years of uninterrupted state service.

The reference made to "retroactive longevity pay" contained in Rule 7.30, 2 Management Memorandum No. 4B (5-15-75), clearly indicates an intention on the part of the Department of Administration to give credit for longevity increment purposes for state service accumulated prior to January 1, 1975. The Department of Administration has also defined by rule certain exceptions to the "continuous and uninterrupted" requirement of H.J.R. No. 37 which have been previously quoted.

Your question as presented indicates that a state employee had been terminated from state service for a one year period. If this is the case, such employee would not be able to satisfy the exceptions to the "uninterrupted" requirement contained in H.J.R. No. 37 unless he were terminated for military service. However, such an employee may qualify for longevity benefits and satisfy the "uninterrupted" requirement if he comes within the category of persons contemplated by Rule 7.44, 2 Management Memorandum No. 4B (5-15-75). Thus, if he was "laid-off by the State" in order to achieve a necessary reduction in the work force and subsequently: "...IMMEDIATELY accept(ed) re-employment with the State when a bona fide offer of re-employment....," was made, then I would conclude that such an employee would be eligible for the longevity benefits contemplated by H.J.R. No. 37.

I would also point out that the Department of Administration's Rules 7.41 through 7.46 designate different classes of persons for each rule and only one rule is to be applied to any one class of state employees.

THEREFORE, IT IS MY OPINION:

The longevity provisions of House Joint Resolution No. 37 would accrue to the benefit of a person who had been employed by the State of Montana for a continuous period of twenty years but who had been terminated for a period of one year and then rehired for a period of at least two years prior to the enactment of the statewide wage and salary plan for public employees if his termination was required to achieve a necessary reduction in force and he subsequently accepted re-employment with the State when a bona fide offer of employment was made.

Very truly yours,

ROBERT L. WOODAHL
Attorney General