

VOLUME NO. 36

Opinion No. 57

RETIREMENT — Metropolitan Police Law; Police reserves; Section 11-1847, Revised Codes of Montana 1947.

HELD: The right to a refund of contributions of a retired police officer under section 11-1847, Revised Codes of Montana 1947 of the

Montana Statewide Police Reserve Fund is confined to police officers whose service with the city was discontinued after July 1, 1975, the effective date of amendments to the Metropolitan Police Law, by other than death or placement upon the reserve list. Therefore, the individual here in question is ineligible for a refund because his service with the city was discontinued prior to July 1, 1975.

February 18, 1976

Mr. Lawrence P. Nachtsheim, Administrator
Public Employees' Retirement Division
1712 Ninth Avenue
Helena, MT 59601

Dear Mr. Nachtsheim:

You have requested my opinion on the following question:

Whether an individual who served on the Great Falls police force from March 3, 1953, to October 1, 1961, is entitled to either a pension or a refund of his contributions under the Montana Statewide Police Reserve Fund established by the Forty-Third Legislative Assembly and effective July 1, 1975 pursuant to Chapter 335, Laws of 1974?

It is my opinion that this individual is entitled to neither a pension nor a refund.

There is nothing to indicate that this individual was eligible for transfer to the police reserves on the date of his retirement from the Great Falls police force by reason of having attained the age of 65 under former section 11-1818, or by reason of disability resulting from injuries suffered in the line of duty under former section 11-1820. His service was also of insufficient duration to meet the twenty year requirement for transfer to the police reserves under section 11-1818, or under new section 11-1843.

Nor is he entitled to a refund of the contributions he made between 1953 and 1961 under new section 11-1847. Section 11-1847 provides in pertinent part:

A police officer whose service with the city has been discontinued by other than death or placement upon the reserve list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary...

At the time this individual ceased being a police officer with the Great Falls force there was no provision for refund of his contributions. In fact, section 11-1830 prohibited such repayments by providing:

Said fund shall not be used for any purpose whatsoever other than payment to members of the police department on the reserve list of the amounts to which they are entitled under the provisions of this act.

Thus, when this individual left the police force, he was entitled to neither a pension nor refund of his contributions.

Under these circumstances it is difficult to ascribe to the Legislature any intent to give such individual something under the 1974 amendments to which he was not otherwise entitled. A contrary intent is evident from a perusal of these amendments to the Metropolitan Police Law, which themselves appear only to affect police officers who are, as of the effective date of the 1974 law, employed by any city as active law enforcement officers. In particular, section 11-1849 provides that:

...this act does not affect police officers already on the reserve list..., and, as to them, their rights and obligations shall be determined as if this act had not been passed...

Exceptions are made when specific additional benefits were given to these police officers already on the reserve list by the 1974 law. The fact that no such intent is clear from the provision of section 11-1843 which provides that the term police officers:

throughout includes "policemen", "active police", "patrolmen", or other similar terms denoting law enforcement officers under the Metropolitan Police Law, who are, as of the effective date of this act, employed by any city as a police officer... (Emphasis supplied)

It is therefore evident that the 1974 amendments to the Metropolitan Police Law were not intended to provide retroactive pension or refund benefits, but rather to allow prospective application to police officers who are employed as law enforcement personnel as of the effective date of the law.

THEREFORE, IT IS MY OPINION:

The right to a refund of contributions of a retired police officer under section 11-1847, Revised Codes of Montana 1947 of the Montana Statewide Police Reserve Fund is confined to police officers whose service with the city was discontinued after July 1, 1975, the effective date of amendments to the Metropolitan Police Law, by other than death or placement upon the reserve list. Therefore, the individual here in question is ineligible for a refund because his service with the city was discontinued prior to July 1, 1975.

Very truly yours,
ROBERT L. WOODAHL
Attorney General