

VOLUME 37

OPINION NO. 103

POLICE - Annuities for officers no longer employed; POLICE DEPARTMENTS - Consolidated, purchase of retirement annuities; RETIREMENT SYSTEMS - Police departments, purchase of annuities; MUNICIPAL CORPORATIONS - Expenditure of state

funds for police officers; REVISED CODES OF MONTANA, 1947 - Sections 11-1834, 11-1837, 16-2726; 35 OP. ATT'Y GEN. NO. 72.

HELD: The town of Columbus may expend funds received pursuant to section 11-1834, R.C.M. 1947, to purchase an annuity for former members of its police department even though the town now has a consolidated department.

28 December 1977

Richard Heard, Esq.
Town Attorney
Town of Columbus
Columbus, Montana 59019

Dear Mr. Heard:

You have requested my opinion on the following question:

May the town of Columbus, which has previously consolidated its police services pursuant to section 16-2726, R.C.M. 1947, expend funds received pursuant to section 11-1834, R.C.M. 1947, to purchase a retirement annuity for policemen no longer employed by the town?

Section 11-1834, R.C.M. 1947 provides for annual state payments to municipalities with police departments:

At the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947.

Under the terms of section 11-1837 these funds so received are to be spent by a city or town not coming within the provisions of the police retirement law for one of two purposes: "for police training or to purchase pensions for members of their police department."

The town of Columbus consolidated its police department with the Stillwater County Sheriff's Department and formed a

Department of Public Safety pursuant to section 16-2726, R.C.M. 1947. As a result of this consolidation the members of the town's police department were no longer employed by the town.

You want to know if the funds received under section 11-1834 can be used to buy an annuity for these discharged officers.

This office has determined in a previous opinion that cities and towns who have consolidated their law enforcement services, pursuant to section 16-2726 have "police departments" within the meaning of section 11-1834 and are therefore eligible to receive funds thereunder. 35 OP. ATT'Y GEN. NO. 72.

Therefore, is a purchase of an annuity for the benefit of former members of a police department a purchase of "pensions for members of [its] police department" within the meaning of section 11-1837? It is the general rule of law that pension statutes are to be construed liberally in favor of the pensioner. Adams v. City of Modesto, 53 Cal.2d 833, 350 P.2d 529 (1960).

The purchase of an annuity for former members of the police department to reward them for long years of service and the sudden discontinuance of their employment is certainly an application of funds for which the police retirement system law was passed. Applying the liberal rule of construction the purchase of such an annuity is the expenditure of funds to "purchase pensions for members of [its] police department."

THEREFORE, IT IS MY OPINION:

The town of Columbus may expend funds received pursuant to section 11-1834, R.C.M. 1947, to purchase an annuity for former members of its police department even though the town now has a consolidated department.

Very truly yours,

MIKE GREELY
Attorney General