

VOLUME NO. 37

OPINION NO. 117

MUNICIPAL GOVERNMENT - Training and retirement of peace officers - state funds; INTERGOVERNMENTAL COOPERATION - Police; PEACE OFFICERS - Training and retirement; PUBLIC FUNDS - Use for training and pensions of peace officers; COUNTIES - Intergovernmental cooperation; REVISED CODES OF MONTANA, 1947 - Sections 11-1814, 11-1834, 11-1837, 11-1856, 11-1860-1892, 16-2726, and 16-3705; 35 OP. ATT'Y GEN. NO. 72 (1974).

- HELD: 1. Third class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under section 11-1834, R.C.M. 1947, to pay the county for their share of the consolidated law enforcement expense, unless those funds are used exclusively for pensions and/or training.
2. Such cities or towns may use the funds provided under section 11-1834 to contribute to the pension fund, or to pay for training expenses of peace officers under the consolidated law enforcement agency. Those expenditures may be all or part of the cities' share of the expense for the consolidated department of public safety.

6 March 1978

E. V. "Sonny" Omholt
State Auditor
Ex-Officio Commissioner of Insurance
State Capitol
Helena, Montana 59601

Dear Mr. Omholt:

Your department has requested my opinion on the following questions:

1. Can third class cities or towns that have consolidated their police departments with county law enforcement offices use the funds received from the state under section 11-1834, R.C.M. 1947, to pay the county for their share of the consolidated law enforcement expense?

2. Can such city or town contribute to a pension fund for the benefit of the consolidated law enforcement office as part of or all of the monthly charge for contracted services?
3. Can such city or town contract with the county to buy training equipment or provide training expenses for the benefit of the consolidated law enforcement office as part of or all of the monthly charge for the contracted services?

It is my understanding that several third class cities and towns have recently consolidated their police departments with the county sheriffs' department pursuant to section 16-2726, R.C.M. 1947, forming a department of public safety. In 35 OP. ATT'Y GEN. NO. 72 (1974) it was held that any regular organization providing police services to a municipality would qualify as a police department within the meaning of section 11-1834. That opinion further held that a municipality not governed by the provisions of the police retirement system law may expend state funds received under section 11-1834 for training and pensions for members of a police department providing law enforcement services pursuant to an interlocal agreement.

Section 11-1834 requires the State Auditor to make a payment to each city and town having a police department which is not a participant in the Municipal Police Officers Retirement Act. Section 11-1834 provides as follows:

At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system 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.

The funds provided in that section are restricted and must be used either for training or for the purchase of pensions for members of the police department. Section 11-1837 provides:

Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all funds received pursuant to this act.

Your first question concerns whether these cities or towns can use the funds received under section 11-1834 to pay the county for their obligation for the consolidated services. As mentioned above, sections 11-1834 and 11-1837 restrict the use of these yearly payments. As the city or town is not under the Municipal Police Officers' Retirement Act, these funds can only be used for training or for pensions. The restrictions of sections 11-1837 are clear and must be followed. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). There is no authority which will allow these funds to be used to pay for the cities' share of the law enforcement expense, unless those funds are used for pensions or training.

Your other questions concern whether those cities or towns can use the funds provided under section 11-1834 to pay all of the cities' share for the consolidated law enforcement office if the funds are used only for training and pensions.

35 OP. ATT'Y GEN. NO. 72 (1974) holds that the funds may be used to contribute to the pension fund of the consolidated department of public safety. That fund is governed by the provisions of chapter 26, Title 68, R.C.M. 1947.

It is a general rule that statutory provisions regarding pensions should be construed liberally in favor of the pensioner. Adams v. City of Modesto, 53 Cal.2d 833, 350 P.2d 529 (1960). Section 11-1837 clearly was intended by the Legislature to strengthen the police pension system. The objects sought to be achieved by legislation are of prime consideration and a statute must not be interpreted to defeat its evident purpose. See Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

It is also evident that section 11-1837 was intended to encourage police training. Training is mandatory for most peace officers within the State of Montana. Section 11-1814

of the Metropolitan Police Act requires training; the minimum standards are set by the Peace Officers' Standards and Training Bureau of the Board of Crime Control. Rules 23-3.14(10)-S14040 M.A.C.. Deputy sheriffs are required to attend the Montana Law Enforcement Academy, section 16-3705(4), and training standards are also established for reserve peace officers, section 11-1856(2).

Peace officer training is a responsibility given high priority by the Legislature. The objects sought to be achieved by the legislation should be given full effect. Doull v. Wohlschlager, supra.

Local governments are encouraged to enter into interlocal agreements and thus share the expenses common to each by the provisions of chapter 49, Title 16, R.C.M. 1947. The consolidation of law enforcement services is to the mutual advantage of the governments involved as well as the public, and should receive state support. There are no statutory provisions prohibiting the use of section 11-1834 funds for all of the cities' share of a consolidated department of public safety, as long as those funds are used exclusively for pensions and training.

THEREFORE, IT IS MY OPINION:

1. Third class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under section 11-1834, R.C.M. 1947, to pay the county for their share of the consolidated law enforcement expense, unless those funds are used exclusively for pensions and/or training.
2. Such cities or towns may use the funds provided under section 11-1834 to contribute to the pension fund, or to pay for training expenses of peace officers under the consolidated law enforcement agency. Those expenditures may be all or part of the cities' share of the expense for the consolidated department of public safety.

Very truly yours,

MIKE GREELY
Attorney General