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OPINION NO. 156

WORKERS COMPENSATION - Municipal policemen, salary payments after disabling injury; MUNICIPAL CORPORATIONS - Municipal policemen, salary payments after disabling injury; POLICE - Municipal police, salary payments after disabling injury; REVISED CODES OF MONTANA, 1947 - Sections 11-1822.1, 92-701.1, 92-701.6, 92-439, 92-440, 92-441, 92-702.1, 92-703.1.

HELD: Section 11-1822.1 requires a municipality to pay an injured policeman's full salary during the period of disability or one year, whichever ends first. The Workers Compensation Fund is not liable for any wage loss benefits during that period because the municipality pays the policeman in full and he has suffered no wage loss.

14 August 1978

Norman H. Grosfield, Administrator  
Division of Workers' Compensation  
815 Front Street  
Helena, Montana 59601

Dear Mr. Grosfield:

You have requested my opinion on the following question:

Does section 11-1822.1 require a municipality to pay an injured policeman's full salary during a period of disability, or must the State Compensation Insurance Fund pay workers' compensation benefits to the disabled policeman, with any remaining balance of the policeman's salary being paid by the municipality?

Section 11-1822.1, a part of the Metropolitan Police Law, was enacted in 1977, and provides:

A member of a municipal law enforcement agency of a first or second class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the full amount of his regular salary, less any amount he may receive from workers' compensation, until his disability has ceased or for a period not to exceed one year whichever shall first occur.

The Act was entitled an "act to provide that municipalities ... shall continue to pay the salaries of police officers injured in the performance of their duties...." Despite the title's clarity, an ambiguity arises because of the statute's exclusion from the "full amount of...regular salary" the municipality must pay of "any amounts [the policeman] may receive from workers' compensation."

An injured worker can receive both wage loss (section 92-701.1) and medical (section 92-706.1) workers' compensation benefits. Since section 11-1822.1 is expressly intended to insure a policeman's wage replacement, it is only related, if at all, to the lost wage compensation provisions of the Workers' Compensation Law. Otherwise the explicit intent of that section, that the policeman receive his full salary,

would be frustrated if it were reduced by the amounts of medical and hospital benefits that he received. In some cases, the medical and hospital benefits would greatly exceed the policeman's salary, leaving him with nothing. That is clearly not the intent of section 11-1822.1.

When an attempt is made to reconcile section 11-1822.1 with the wage loss provisions of the workers compensation law, however, a situation arises which was evidently not contemplated by the drafters of that section. An injured worker is entitled to wage loss benefits only to the extent that he in fact has suffered a loss in wages. See sections 92-439, 92-440, 92-441, 92-701.1, 92-702.1 and 92-703.1. It is evident that if the injured policeman receives "the full amount of his regular salary" from the municipality pursuant to section 11-1822.1, he is not entitled to wage loss benefits from the Workers Compensation Fund. Thus, the amount he "may receive" from workers' compensation is zero, and the municipality is responsible for his entire salary.

This conclusion is consistent with both the explicit language of section 11-1822.1 and the remainder of the act (Laws of Montana (1977) ch. 451). Sections 11-1822.2 through 11-1822.7 show clear legislative intent to supplant the ordinary provisions in Title 92 for determining workers' compensation benefits for injured policemen. The municipality determines whether there has been a work-related injury and whether it resulted in disability. (Section 11-1822.2.) The municipality's physician periodically examines the policeman to determine whether he is able to perform his duties (section 11-1822.3). The municipality has a cause of action against a third party tortfeasor who caused the policeman's injuries (section 11-1822.7).

The Legislature has chosen to enact this entirely separate system for wage replacement for injured policemen. Section 11-1822.1 cannot be construed to require the municipality to pay only the difference between the policeman's full salary and the amount he would get as wage loss worker's compensation benefits. Otherwise the injured policeman would be subject to two disability determinations, two medical examinations, possibly differing determinations of how long the disability lasts, etc. He might receive the "difference" amount from the city and nothing from workers' compensation, or vice versa. These situations would frustrate the express intent of section 11-1822.1 that the injured policeman receive the "full amount of his regular salary."

This does not limit the policeman's medical and hospital benefits under workers compensation laws, and the municipality's obligation ceases after a maximum of one year. If the policeman is still disabled after one year, then he is eligible for wage loss workers compensation benefits.

THEREFORE, IT IS MY OPINION:

Section 11-1822.1 requires a municipality to pay an injured policeman's full salary during the period of disability or one year, whichever ends first. The Workers' Compensation Fund is not liable for any wage loss benefits during that period because the municipality pays the policeman in full and he has suffered no wage loss.

Very truly yours,

MIKE GREELY  
Attorney General