

VOLUME NO. 37

OPINION NO. 3

FIRE DEPARTMENTS - Pensions for retired firemen; FIRE DEPARTMENT RELIEF ASSOCIATIONS - Payment to retired members; FIREMEN - Pensions, basis; CITIES AND TOWNS - Minimum wages of firemen by statute not mandatory base salary for pensions; REVISED CODES OF MONTANA, 1947 - Sections 11-1972.2(2), 19-1932.

HELD: The basis used by the fire department relief associations in cities of the first or second class in determining pensions of retired firemen is the regular monthly salary paid confirmed active firemen as set by the budget of the city in each and every year.

25 February 1977

William A. Penttila, Chief
Fire Marshal Bureau
528 Sanders Street
Helena, Montana 59601

Dear Mr. Penttila:

You have requested my opinion concerning the pension adjustments for firemen retired prior to July 1, 1973. More specifically you asked:

What basis shall a fire department relief association use to determine the pension of firemen retiring prior to July 1, 1973?

Section 11-1972.2(2), R.C.M. 1947, provides:

Effective January 1, 1976, each and every fire department relief association, organized and existing under the laws of this state, shall pay to the firemen retired before July 1, 1973, or their widows and orphans, a monthly compensation of not less than one-half (1/2) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city....

You have provided the following facts:

A city of the first or second class hires probationary firemen at \$750.00 per month. Following six months service the firemen are given a \$5.00 raise and considered permanent firemen. Then after an additional six months, or a total of one year service, the salary is raised to the current base of \$900.00 per month. The fire department relief association for that city uses the figure of \$755.00 per month as being the regular monthly salary paid to a confirmed active fireman. Therefore, the firemen who retire before July 1, 1973, can receive no more than \$375.50 monthly compensation without a raise dictated through legislative enactment.

A city such as the one in question apparently considers the minimum wage for confirmed firemen set forth in section 11-1932, R.C.M. 1947, as a mandatory base for determining pensions under section 11-1927.2(2), R.C.M. 1947. The exact language of the pertinent portion of section 11-1932 is:

After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire departments of cities and towns of the first or second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work of at least seven-hundred fifty dollars (\$750.00) per month for the first year of service, and thereafter of at least \$750.00 per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. (Emphasis added.)

Section 11-1932 specifically sets \$750.00 per month as the minimum base salary for confirmed firemen, not as a mandatory base salary. A city may set any sum greater than this statutory base as the regular monthly salary paid its firemen.

Section 11-1972.2 obviously contemplates a varying regular monthly salary by use of the words "regular monthly salary paid to a confirmed active firemen of that city as provided each and every year in the annual budget of the city." The clear meaning of this language is that the base from which the pension of firemen retired prior to July 1, 1973, shall be determined is equated to the regular monthly salary paid active firemen in each and every year in that particular city. This base obviously may vary from year to year as the cities' budget allocation for active firemen salaries varies.

Section 11-1972.2 envisions a cost of living type sliding scale for pension payments to correspond with increases or decreases in the base salary of active firemen. The clear language of this statute calls for pension payments increasing or decreasing each an every year based on the city budget for firemen for that year. The minimum base salary set forth in section 11-1932 only goes to the minimum the confirmed active firemen may be paid in a city of the first or second class. It does not indicate mandatory allotment for confirmed active members of those fire departments. Thus, in the hypothetical above, the basis used by the fire departments relief association should be the regular base salary or \$900.00 per month.

THEREFORE, IT IS MY OPINION:

The basis used by fire department relief associations in cities of the first or second class in determining pensions of firemen retiring prior to July 1, 1973, is the regular monthly salary paid confirmed active firemen as set by the budget of the city in each and every year.

Very truly yours,

MIKE GREELY
Attorney General