

VOLUME NO. 37

OPINION NO. 48

PENSIONS - Police officers; POLICE OFFICERS - Surviving Spouse; MARRIAGE - Affect of Annulment; REVISED CODES OF MONTANA, 1947 - Section 11-1844.

HELD: A police officer's surviving spouse, who remarries and whose remarriage is annulled ab initio, is entitled to reinstatement of her pension benefits under section 11-1844(2), R.C.M. 1947.

21 July 1977

W.G. Gilbert, Jr.  
City Clerk and Ex-officio  
City Attorney  
City of Dillon  
Dillon, Montana 59725

Dear Mr. Gilbert:

You have requested an opinion from this office based upon the following factual situation.

The City of Dillon has elected to adopt the Metropolitan Police Law, section 11-1801 et seq., R.C.M. 1947, and provide a police pension fund, which the city administers itself. The surviving spouse of a former Chief of Police was receiving pension benefits following her husband's death subsequent to his retirement, and continued to do so until her remarriage on May 1, 1976. At that time her pension benefits were terminated. Subsequently, her remarriage was annulled on April 19, 1977 by a district court decree declaring the remarriage void ab initio, and she has made demand upon the city to restate her pension benefits, as of the date of the annulment decree.

The question presented is what effect the annulment of the surviving spouse's remarriage has upon her claim to pension benefits.

The statute governing the payment of a pension to a surviving spouse, section 11-1844(2), R.C.M. 1947, does not address this issue. The only language in the statute addressing the length of time for which benefits must be paid is the phrase "as long as such spouse remains the surviving spouse."

This same issue was discussed in relation to the Fire Department Relief Association in 28 OP. ATT'Y GEN. NO. 80 (1959). Therein, the former Attorney General held that a fireman's surviving spouse, who remarries and whose remarriage is annulled ab initio, is entitled to reinstatement of her pension benefits.

The issue has not been decided by the Montana Courts, however, other jurisdictions have addressed the issue and reached the conclusion that such a situation warrants reinstatement of the surviving spouse's pension benefits. Cottam v. Los Angeles, 184 Cal.App.2d 523, 7 Cal.Rptr. 734 (1960); Clark v. City of Los Angeles, 187 Cal.App.2d 792, 9 Cal.Rptr. 913 (1960); Boyle v. Philadelphia Police Widows Pension Fund Assoc., 219 Pa.Super. 230, 280 A.2d 577 (1970). As stated in Annot. 85 ALR.2d 242 (1962), the general rule is that "an annulment of a widow's remarriage restores her to the pension rights held by her as the widow of the first husband, prior to the remarriage.

VOLUME NO. 37

OPINION NO. 49

CITIES AND TOWNS - Nepotism, appointment of son-in-law by Mayor; NEPOTISM - Appointment of son-in-law by mayor of city or town prohibited; REVISED CODES OF MONTANA, 1947 - Section 59-519.

HELD: The appointment of the son-in-law of an appointing mayor to the position of Chief of Police would violate the nepotism prohibition of section 59-519, R.C.M. 1947, even though he may be the most qualified applicant for the position.