

VOLUME NO. 37

OPINION NO. 77

RETIREMENT SYSTEMS - The pension supplement provided by section 11-1846.1, R.C.M. 1947 is to be paid in monthly installments beginning in July, 1977; POLICE - The pension supplement provided by section 11-1846.1, R.C.M. 1947 is to be paid in monthly installments beginning in July, 1977; REVISED CODES OF MONTANA, 1947 - Section 11-1846.1.

- HELD: 1. The first supplemental payment to the July, 1977. A lump sum payment to cover the months of July, August, September and October should be made immediately.
2. The supplement is to be paid in monthly amounts after the initial lump sum payment is made.
3. The appropriate funding to be implemented may be determined by the administrator of the Public Employees Retirement Division in conformity with this opinion.

14 October 1977

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
1501 East Sixth Avenue
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion as to the procedural implementation of section 11-1846.1, R.C.M. 1947, enacted by the 1977 Legislature. Section 11-1846.1, R.C.M. 1947, provides for minimum payments to police officers, spouses, and minor children who were receiving retirement benefits from police reserve funds prior to July 1, 1975.

The specific questions raised in your request are as follows:

1. When must the first supplemental payment to the recipients be made?
2. Is the supplement to be paid on a monthly basis or in a lump sum at the end of each fiscal year?
3. When must the State Auditor transfer funds to the administrator of the police reserve fund?

Section 11-1846.1, R.C.M. 1947, is a remedial statute designed to give increased retirement benefits to police officers, spouses, and minor children who were receiving retirement payments from police reserve funds prior to July 1, 1975. Chapter 335, Session Laws of 1974, created a disparity in retirement benefits between the policemen already on the reserve list as of July 1, 1975 and those who retired after July 1, 1975. Therefore, since section 11-1846.1, R.C.M. 1947, is remedial in nature, it is entitled to be liberally construed to effectuate the relief sought. Attix v. Robinson, 155 F.Supp. 592 (D.C. Mont. 1957). It should also be noted that section 11-1846.1, R.C.M. 1947, was made effective immediately upon passage and approval, April 18, 1977. This is in contrast with the usual Montana statute which takes effect on the 1st day of July of the year of its passage and approval. Lodge v. Ayers, 108 Mont. 527, 91 P.2d 691 (1939).

This information is important in answering your first two questions concerning when and in what manner the supplemental payments must be made. Giving section 11-1846.1, R.C.M. 1947, a liberal construction, and reading it in pari materia with other metropolitan police laws leads to the conclusion that the Legislature intended the increased retirement benefits to commence in July 1977 in the form of monthly payments.

Section 11-1846.1, R.C.M. 1947, is part of the Metropolitan Police Law found in Title 11, chapter 18. It is intended to supplement the pensions that are received as monthly payments by eligible policemen, spouses, and minor children who were receiving pensions as of July 1, 1975. Section 11-1846.1, R.C.M. 1947, makes specific reference to other sections contained in the Metropolitan Police Law and depends on those referenced sections for the timing and funding of the minimum payments. Therefore, it should be read with reference to the other statutes as one system in pari materia. See Oxford v. Topp, 136 Mont. 227, 346 P.2d 566 (1959), which states the general rule that where one statute provides the formula and the other provides the definition of terms in the formula they both must be construed together. Furthermore, since section 11-1846.1, R.C.M. 1947, is designed to provide a portion of the pension benefits, it must be read and construed with all other statutes having the same general purpose. City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971).

Section 11-1821, R.C.M. 1947, which provided the pension benefits to policemen, spouses and minor children who became eligible for retirement prior to July 1, 1975 states:

(1) Whenever any policeman or officer shall from age or disability become transferred from the active list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to the one-half ($\frac{1}{2}$) the salary he was receiving during the year prior to the time he passed to the police reserve list. (Emphasis added.)

Section 11-1846.1(5), R.C.M. 1947 in part states:

...the department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met. (Emphasis added.)

Section 11-1846.1, R.C.M. 1947, supplements the funds and is a part of the Metropolitan Police Act. The mandate of section 11-1821, R.C.M. 1947, applies and controls payments under section 11-1846.1, R.C.M. 1947, since the latter contains no language to the contrary.

When the first monthly supplement is to be received is indicated by the fact that the Legislature made this act effective immediately upon passage and approval. Subsection (5) directs the use of the funds to supplement the monthly payments so that the requirements of subsection (1) are met. Subsection (1) requires the payment to eligible recipients for each fiscal year, commencing with the fiscal year beginning July 1, 1977 be not less than one half the salary of a newly commissioned police officer in that fiscal year. Since payment was to commence with the fiscal year beginning July 1, 1977 and the act was made effective immediately upon passage and approval, it is clear the Legislature intended the increased retirement benefits to commence July, 1977. To conclude otherwise would render the immediate effective date useless, and it is presumed the Legislature does not perform useless acts. Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973).

If section 11-1846.1, R.C.M. 1947, is read in pari materia with the Metropolitan Police Law, the supplemental payments must be made monthly and should have commenced in July, 1977.

The problem of implementing this supplement arose when the mechanics for funding the supplement, provided by the Legislature, were examined. This leads to your third question concerning the time of payment to the administrator of the police reserve fund.

The question is specifically answered by section 11-1846.1, R.C.M. 1947, which states:

The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (1)(d)(i) through (1)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 11-1835, to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 11-1834. (Emphasis added.)

The payment made by the State Auditor under section 11-1834, R.C.M. 1947, is made at the end of each fiscal year. There-

fore, the State Auditor must transfer funds to the administrator of the police reserve fund at the end of each fiscal year. Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the courts to construe, the court's function in such case being simply to ascertain and declare what is in terms and substance contained therein. Hammil v. Young, 168 Mont. 81, 540 P.2d 971 (1975); Olson v. Manion's Inc., 162 Mont. 197, 510 P.2d 6 (1973).

Two additional questions must be answered. First, in which fiscal year will the first transfer of funds from the state auditor to the treasurer occur? Section 11-1846.1, R.C.M. 1947, indicates that this first transfer will occur at the end of the fiscal year commencing July 1, 1977. In order to determine the amount of the transfer, the auditor must receive reports from each city and town involved, pursuant to sections 11-1846.1(2) and 3), R.C.M. 1947, containing the names of eligible recipients, the amounts paid to such recipients in the base fiscal year, and the salaries to be paid to newly confirmed police officers for the fiscal year commencing July 1, 1977. Section 11-1846.1(4), R.C.M. 1947. The reports by each city and town concerning the names of the eligible recipients and the amounts paid to them in the base fiscal year are required to be filed with the auditor on or before April 1 of each year. Section 11-1846.1(2), R.C.M. 1947. This act became effective April 18, 1977. Consequently, the first of these reports are due on or before April 1, 1978. The reports concerning the salary of newly commissioned police officers in each city or town are described in section 11-1846.1(3), R.C.M. 1947:

Each fiscal year, commencing with the fiscal year beginning July 1, 1977, immediately after the adoption by a city or town having a police reserve fund of its budget for that fiscal year each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town. (Emphasis added.)

Since the cities and towns do not adopt their budget until August of each fiscal year pursuant to section 11-1406, R.C.M. 1947, this report is also filed subsequent to the beginning of the fiscal year commencing July 1, 1977. Therefore, the auditor did not have the necessary information to make the transfer of funds until after the fiscal year commencing July 1, 1977. It did not appear possible to make the transfer until the end of that fiscal year.

The first sentence of section 11-1846.1, subsection (4), indicates that the state auditor cannot transfer funds to the treasurer of the cities or towns until he has received the reports referred to in subsections (2) and (3). However, the second sentence requires that the state auditor pay at the same time as and in addition to the payment under section 11-1834, R.C.M. 1947, which states:

11-1834. Annual state payments to municipality with police department. 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 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.
(Emphasis added.)

Section 11-1834, R.C.M. 1947, states the payment is due "at the end of each fiscal year." The obvious conflict between time of payment and the determination of the amount of the payment is resolved by the remaining portion of section 11-1834, R.C.M. 1947, which provides that the amount of the warrant be computed in the same manner as the amount paid pursuant to section 11-1919, R.C.M. 1947.

Section 11-1919, R.C.M. 1947, directs that the firemen's pension fund also be paid at the end of the fiscal year and provides the mechanics for determining the amount to be paid. Section 11-1919, R.C.M. 1947, must, however, be read in pari materia with the other section of the Fireman's Act. Section 11-1920, R.C.M. 1947 states:

Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. The state auditor shall pay the actuary fee as required by section 11-1914. Any balance remaining after such payments have been ordered shall be transferred to the general fund.
(Emphasis added.)

The reference concerning timing and payment in section 11-1846.1(4) is to section 11-1834, R.C.M. 1947, which in turn refers to section 11-1919. This fact and the effective

date of the act, indicate the Legislature intended to use a uniform process for paying both the police and firemen out of the fund created by premium taxes on insurance. Section 11-1920, R.C.M. 1947, provides for an estimate to be made to fund the payments and this amount to be paid into an earmarked revenue fund, with any balance remaining to revert to the general fund.

It is presumed that the Legislature passed section 11-1846.1, R.C.M. 1947, with full knowledge of all existing statutes on the same subject, and did not intend to interfere with a former law relating to the same matter unless repugnancy between the two is irreconcilable. Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484, 19 ALR.2d 1108 (1950).

Based on the inclusion by reference of method of payment contained in the Fireman's Pension Act, the state auditor could have estimated the payments needed under section 11-1846.1, R.C.M. 1947, and paid the sums into an earmarked revenue fund. That fund will be adjusted to actual payments when the reports are received and the difference calculated as provided in section 11-1846.1(4), R.C.M. 1947.

The second question concerns the use of the funds transferred to the treasurer at the end of the fiscal year. In examining the procedure set forth in section 11-1846.1(5), R.C.M. 1947, a supplement, not reimbursement, is contemplated.

The treasurer of each city or town receiving funds under subsections (4) shall immediately deposit them with the department of administration or to the credit of the city or town's police reserve fund, as the case may be. The department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to persons described in subsection (2)(a) through (2)(c) so that the requirements of subsection (1) are met. (Emphasis added.)

The administrator is to receive the funds from the auditor before making the supplemental payments to the recipients. Those funds, if the terms of section 11-1846.1, R.C.M. 1947, were strictly adhered to, would not be available until the end of the fiscal year in June, 1978.

Although the Legislature intended to remedy the disparity between retirees receiving pensions prior to July 1, 1975,

and those retiring subsequent to that date, they misconstrued the method of funding which would be adequate to effectuate that intent.

It must be kept in mind that a statute will not be interpreted to defeat its evident object or purpose, since objects sought to be achieved by legislation are of prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963). Nor should statutory construction lead to contrary results if reasonable construction will avoid it. State ex rel. Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 348 P.2d 797, 78 ALR.2d 1012 (1960). To achieve the object of section 11-1846.1, R.C.M. 1947, and to provide immediate relief to recipients of the police retirement fund it is necessary that the supplement be available on a monthly basis retroactive from July 1, 1977.

To accomplish this, one of two possible approaches may be implemented. The first of these would be to use the payments from the auditor as a reimbursement, even though a literal reading of the statute does not contemplate this.

The administrator of the Public Employees Retirement Division has assured this office that the reimbursement approach would be feasible and immediate payments could be made from the Municipal Police Officer's Retirement Fund. That fund could then be reimbursed in April, 1978 by payments from the Auditor out of the premium tax collected on insurance.

A better alternative would be for the state auditor to retrieve the necessary funds from the general fund, pursuant to the expressed statutory intent of the Legislature to provide immediate relief for eligible pension recipients.

These would be temporary measures to effectuate the purpose of this legislation. At the same time, the Legislature would have an opportunity to consider clarifying the ambiguity of section 11-1846.1, R.C.M. 1947, in the next session.

THEREFORE, IT IS MY OPINION:

1. The first supplemental payment to the recipients was intended to be made in July, 1977. A lump sum payment to cover the months of July, August, September and October should be made immediately.

2. The supplement is to be paid in monthly amounts after the initial lump sum payment is made.
3. The appropriate funding to be implemented may be determined by the administrator of the Public Employees Retirement Division in conformity with this opinion.

Very truly yours,

MIKE GREELY
Attorney General