

VOLUME NO. 37

OPINION NO. 8

FIREMEN - Longevity pay; CITIES - First and second class, payment to firemen for total years' service; CITIES - Firemen to be paid one percent of statutory minimum for each year of service; FIREMEN - Salary based on total years of service; FIREMEN - Payment of salary for years beyond twenty, not retroactive to time prior to July 1, 1975; REVISED CODES OF MONTANA - Sections 11-1932, 12-201.

HELD: An active fireman in a city of the first or second class shall be paid for his total years of service with the fire department at a wage not less than the statutory minimum plus one percent of that minimum for each year of service with the department. The determination of this salary shall be based on total years of service. However, the payment for any years of service in excess of twenty years shall begin from and after July 1, 1975.

7 March 1977

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

Dear Mr. Penttila:

You have requested my opinion concerning the determination of longevity pay for firemen who reached twenty years of service prior to 1975 when section 11-1932, R.C.M. 1947, was amended to remove any ceiling on yearly increases.

Prior to the amendment of this section which deals with the minimum wages to be paid firemen in cities of first and second class, the section read as follows:

From and after July 1, 1967, there shall be paid to each duly appointed and confirmed member of the fire department of cities or 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 four hundred dollars (\$400.00) per month for the first year of service, and thereafter at least four hundred dollars (\$400.00) minimum per month plus one percent (1%) of said minimum base monthly salary four hundred dollars (\$400.00) for each additional year of service up to and including the twentieth year of such additional service. (Emphasis added.)

Subsequent amendments to this section in 1969 and 1973 changing effective dates and raising the minimum wages, are not pertinent to this discussion.

In 1975 the Montana Legislature amended section 11-1932, R.C.M. 1947, by section 1, chapter 324, to read as follows:

From and after July 1, 1975, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the State of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work at least seven hundred dollars (\$700.00) per month for the first year of service, and thereafter of a least seven hundred dollars (\$700.00) minimum per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and 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 seven hundred fifty dollars (\$750.00) per month plus one percent (1%) of said minimum base monthly salary for each additional year of service.

The 1975 amendment removed the prior twenty year ceiling on accumulation of longevity pay (emphasized in the original section above) and you have asked what effect this removal

has on those firemen who accumulated more than twenty years of service prior to July 1, 1975. More specifically you asked:

Does the 1975 amendment of section 11-1932, R.C.M. 1947, mean that active members of a fire department are to be paid longevity on total time in the fire department or does the city skip the years between a fireman's accumulation of twenty years and 1975 so as to start paying the longevity from and after July 1, 1975?

You give the following example:

A fireman with 26 years of service in 1975 was receiving longevity representing 20 years service on the effective date of section 11-1932, as amended. Starting with the year following, the effective date of this statute, as amended, does he receive 27 years of longevity pay which would be 27% of the base salary, or does he receive 21 years of longevity pay, or 21%?

The basic question to be answered is whether section 11-1932, R.C.M. 1947, should be applied retroactively to firemen acquiring twenty years service prior to the effective date of that statute.

Section 12-201, R.C.M. 1947, provides:

No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.

The Montana Supreme Court has stated many times that statutes are not to be given a retroactive operation unless it is clearly set out that such was the intention of the Legislature. Dunham v. Southside National Bank of Missoula, Mont. \_\_\_, 548 P.2d 1383 (1976); City of Harlem v. State Highway Commission, 149 Mont. 281, 425 P.2d 718; Yurkovich v. Industrial Accident Board, 132 Mont. 77, 314 P.2d 866 (1957).

Section 11-1932, R.C.M. 1947, as amended in 1975, states, in the first portion, "from and after July 1, 1975" and, in the second portion, "after July 1, 1976." It is clear by this language that the Legislature did not intend the statute to have retroactive effect; thus, the presumption against retroactivity would control.

Therefore, a fireman with twenty years or more of service which accrued prior to 1975 could not receive increased wages for the years prior to 1975. An increased basis at one percent (1%) per year for the years prior to 1975 would not be considered.

However, the language of section 11-1932, R.C.M. 1947, as amended in 1975 states that a confirmed fireman shall receive at least the statutory minimum plus one percent (1%) of that minimum for each additional year of service. Under the language of this statute a fireman would receive, from and after July 1, 1975, one percent (1%) of the base salary for firemen in that city for each year of service with the department, or as in your example, twenty seven percent (27%) of the base salary. This would not be giving the statute retroactive effect since the increased salary, or the twenty seven percent in your example, would only start on July 1, 1975, and apply to years thereafter.

THEREFORE, IT IS MY OPINION:

An active fireman in a city of the first or second class shall be paid for his total years of service with the fire department on the basis of section 11-1932, R.C.M. 1947, as amended in 1975, at a wage not less than the statutory minimum plus one percent of that minimum for each year of service with the department. The determination of salary shall be based on the total years of service. However, the payment for any years of service in excess of twenty years shall begin from and after July 1, 1975.

Very truly yours,

MIKE GREELY  
Attorney General