

VOLUME NO. 38

OPINION NO.4

FIRE DEPARTMENTS - Commencement of longevity for determining minimum wage for firefighters;
FIRE DEPARTMENT RELIEF ASSOCIATIONS - Computation of time in service for service pension eligibility;
MINIMUM WAGES - Firefighters, commencement of longevity for;
MUNICIPAL CORPORATIONS - Calculation of longevity in determining minimum wage for firefighters;
REVISED CODES OF MONTANA 1947 - Sections 11-1922(1), 11-1925, 11-1925.1, 41-2303.1.

- HELD: 1. Longevity for purposes of determining the minimum wage for a firefighter in a city of the second class in Montana under section 41-2303.1, R.C.M. 1947, begins at the date of confirmation as a member of the fire department.
2. Eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947, is calculated

on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation.

10 January 1979

Theodore P. Cowan, Esq.
Lewistown City Attorney
City of Lewistown
312 4th Avenue South
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion on the following questions:

1. At what point does longevity begin under section 41-2303.1, R.C.M. 1947, for a firefighter employed by a city of the second class in Montana?
2. At what point does a firefighter's service in the fire department commence for purposes of determining his eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947?

As stated in your inquiry, certain firefighters in your city contend that their longevity for purposes of calculating their minimum wage under section 41-2303.1, R.C.M. 1947, should be determined from the date of their initial entry into the Lewistown Fire Department as trainees under the Emergency Employment Act. Neither of the firefighters in question was appointed or confirmed as a full-paid member of the Department until a later date.

Section 41-2303.1, R.C.M. 1947, provides:

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 of at least seven hundred dollars (\$700) per month for the first year of service, and thereafter of at least seven hundred dollars (\$700) 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) per month for the first year of service, and thereafter of at least seven hundred fifty dollars (\$750) per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. (Emphasis added.)

The statute by its own terms is addressed exclusively to the firefighter's period of employment in a full-time, confirmed status; no provision is made for time spent on probation or in training. See 36 Op. Att'y Gen. No. 30 at 364 (1975). The "first year of service" clearly refers to the first year of full-time employment as an appointed and confirmed member of the fire department. Likewise, "each additional year of service" for longevity calculations refers only to years served as a confirmed firefighter after the first year of qualifying service. Therefore, under the facts presented by your inquiry, the city of Lewistown is required by section 41-2303.1, R.C.M. 1947, to commence longevity computations for the firemen in question only from the date of confirmation by the city council.

Your second inquiry involves the applicable time period for figuring eligibility for service pension benefits under sections 11-1925 and 11-1925.1, R.C.M. 1947. Specifically, your question concerns a firefighter who served with the Lewistown Fire Department as a trainee under the Emergency Employment Act prior to his actual appointment and confirmation.

According to section 11-1922(1), R.C.M. 1947, a firefighter may be a member of a fire department relief association only if he is a confirmed member of the department. Firefighters in training or on probation are therefore ineligible for membership. Furthermore, trainees and probationers may not be required to make contributions to the association and may not voluntarily contribute. 36 Op. Att'y Gen. No. 30 at 363-64 (1975).

Unlike the requirements for membership in the association, eligibility for service pensions under sections 11-1925 and 11-1925.1, R.C.M. 1947, depends solely upon a member's length of fully paid "active duty" with the fire department.

The period of active duty does not refer to the firefighter's status, but to the time of actual participation in

the business of the fire department. Thus, in a former Attorney General opinion, it was specifically held that the calculation of service pension eligibility for a probationary fireman begins on the date he is hired. 33 Op. Att'y Gen. No. 11 at 30 (1969). Similarly, the time spent by a fireman in training should figure in the computation of "active duty" under sections 11-1925 and 11-1925.1, R.C.M. 1947, as long as the trainee was fully paid and was actually engaged in the business of the fire department.

THEREFORE, IT IS MY OPINION:

1. Longevity for purposes of determining the minimum wage for a firefighter in a city of the second class in Montana under section 41-2303.1, R.C.M. 1947, begins at the date of confirmation as a member of the fire department.
2. Eligibility for a service pension from a fire department relief association under sections 11-1925 and 11-1925.1, R.C.M. 1947, is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation.

Very truly yours,

MIKE GREELY
Attorney General