

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 24

JUDGES - Involuntary retirement allowances;
RETIREMENT SYSTEMS - Judges: Involuntary retirement allowances;
MONTANA CODE ANNOTATED - Sections 3-1-607, 3-1-1107, 3-1-1110, 19-5-101, 19-5-403, 19-5-503;
MONTANA CONSTITUTION - Article VII, section 10.

HELD: A district court judge or supreme court justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under section 19-5-503, MCA. A district court judge or supreme court justice who runs for another judicial position that would entitle him to membership in the Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

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10 July 1981

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
S.W. Mitchell Building
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion on the following question:

Whether a district court judge or supreme court justice who runs for elective public office and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

Specifically you have asked whether a district judge or supreme court justice who is a member of the Judges' Retirement System is "involuntarily discontinued from service" if he seeks election to another office outside the judicial system, such as an office within the executive branch of state government, and subsequently loses the election. You have also asked, as a corollary, whether a sitting judge who chooses not to run for reelection, but runs for a different judicial office, such as a district judge running for election to the supreme court, is "involuntarily discontinued from service" if he loses the election.

Section 19-5-503, MCA, generally provides that contributors to the Judges' Retirement System (district court judges and supreme court justices) are entitled to receive involuntary retirement allowances if they are "involuntarily discontinued from service" after having completed five or more years of service. The term "involuntary retirement" is defined as an early retirement not for cause. § 19-5-101(8), MCA. The type of service referred to in section 19-5-503, MCA, is not statutorily defined. However, when the term is read according to its plain meaning and in the context of the statutory scheme in which it appears, it must logically be interpreted as referring to the holding of a position that entitles the holder to membership in the Judges' Retirement System.

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Under the Constitution and statutes of Montana, a district judge or supreme court justice who runs for an elective public office of an executive or legislative nature, whether he or she wins or loses the election, must be viewed as having discontinued service in the judicial branch. Article VII, section 10, of the Montana Constitution explicitly states: "Any holder of a judicial position forfeits that position by...filing for an elective public office other than a judicial position...." See § 3-1-607, MCA. The decision to run for elective office, however, can hardly be termed "involuntary" as that term is commonly used, and the candidate therefore would not fall within the purview of section 19-5-503, MCA. He or she would instead be entitled to a refund of contributions made to the Judges' Retirement System under section 19-5-403, MCA.

A member of the Judges' Retirement System who runs for another judicial position is not necessarily "discontinued from service" by statute or the Constitution merely by filing for election. Mont. Const. art. VII, § 10; cf. § 3-1-607(3), MCA (requirement of resignation inapplicable to judge running for reelection or election to another judicial office "the term of which does not commence earlier than the end of the term of the office then occupied by him"). Therefore, if the member won the election and thereby continued to serve as either a district judge or supreme court justice or moved from one position to the other, he would retain his status of membership in the retirement system.

On the other hand, if a member of the system ran for another qualifying position and lost the election, it is my opinion that he or she should be considered as having been "involuntarily discontinued from service." Clearly such a discontinuance would not be of the member's own volition and would not constitute a discharge for cause, either of which events would preclude coverage under section 19-5-503, MCA. See §§ 19-5-101(8), 19-5-403, MCA. See also §§ 3-1-1107, 3-1-1110, MCA. The judge or justice losing such an election would therefore be eligible to receive an involuntary retirement allowance, provided the requisite number of years of total service had been performed.

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THEREFORE, IT IS MY OPINION:

A district court judge or supreme court justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under section 19-5-503, MCA. A district court judge or supreme court justice who runs for another judicial position that would entitle him to membership in the Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

Very truly yours,

MIKE GREELY
Attorney General