

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 78

COUNTY OFFICERS AND EMPLOYEES - Longevity payments for  
deputy sheriffs who have worked part-time;

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EMPLOYEES, PUBLIC - Longevity payments for deputy sheriffs who have worked part-time;  
SALARIES - Longevity payments for deputy sheriffs who have worked part-time;  
SHERIFFS - Longevity payments for deputies who have worked part-time;  
WORDS AND PHRASES - "Year of service";  
MONTANA CODE ANNOTATED - Sections 2-18-306, 7-4-2509 (1) (b), 7-4-2510.

HELD: Under section 7-4-2510, MCA, "year of service" means each 2,080 hours of employment when used to compute longevity payments for deputy sheriffs or undersheriffs who have worked for the department on a part-time basis.

20 December 1982

William A. Spoja, Jr., Esq.  
Fergus County Attorney  
Fergus County Courthouse  
Lewistown, Montana 59457

Dear Mr. Spoja:

You have requested my opinion concerning the following question:

Must part-time employment for deputy sheriffs for years prior to October 1, 1981, be counted toward years of service with the sheriff's department for calculation of the longevity payment under section 7-4-2510, MCA?

Section 7-4-2510, MCA, provides as follows:

Sheriff's department--longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

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The specific issue presented by your question is whether a "year of service" as that term is used in the statute refers only to full-time employment, or whether part-time employment would also qualify. The term "year of service" is not defined in the Code, nor has it been defined by the Montana Supreme Court.

If the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself. If the statute is ambiguous or unclear, then the legislative intent must be pursued, if possible. Shannon v. Keller, 37 St. Rptr. 1079, 1081, 612 P.2d 1293, 1294 (1980). If there is any doubt concerning the meaning of a given term in a statute, it is to be determined by the context in which it is employed, and by the purpose and subject of the statute. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 34, 17 P.2d 68, 72 (1932).

Section 7-4-2510, MCA, was enacted as part of House Bill 558 (1981 Mont. Laws, ch. 603). House Bill 558, as originally introduced, did not mention longevity payments. That statutory provision resulted from eventual consolidation of House Bill 558 with Senate Bill 375. Minutes from early committee hearings on Senate Bill 375 indicate that the intention of the drafters of that bill, in including the provisions for longevity payments, was to aid in the retention of experienced sheriff's department officers by making the job more financially attractive to them the longer they worked for the department. Thus, the policy of section 7-4-2510, MCA, is to induce deputy sheriffs and undersheriffs to remain with the sheriff's department by rewarding them with extra compensation commensurate with length of service. If part-time experience is excluded from the calculation of longevity benefits flowing from section 7-4-2510, MCA, this would defeat the Legislature's intent and would result in less incentive for experienced part-time officers to remain with the department.

It is an established rule of statutory construction that statutes must be read together and harmonized if possible to give effect to the legislative intent. Gaffney v. Industrial Accident Board, 133 Mont. 448, 452, 324 P.2d 1063, 1065 (1958). A normal work year consists of 2,080 hours of labor. This figure is the

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one upon which compensation for state employees is presently based. See § 2-18-306, MCA. Similarly, section 7-4-2509(1)(b), MCA, states that, in the case of the sheriff's department employees, the aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours. These statutes appear to express the general legislative intent that a year of employment is equal to fifty-two forty hour weeks, or 2,080 hours. The term "year of service" as used in section 7-4-2510, MCA, should therefore be defined as consisting of 2,080 hours of service. Based upon this definition, a deputy sheriff would be entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for every 2,080 hours of service with the department. This interpretation of section 7-4-2510, MCA, results in a reasonable construction of the statute and promotes the legislative policy of retention of experienced sheriff's department officers.

THEREFORE, IT IS MY OPINION:

Under section 7-4-2510, MCA, "year of service" means each 2,080 hours of employment when used to compute longevity payments for deputy sheriffs or undersheriffs who have worked for the department on a part-time basis.

Very truly yours,

MIKE GREELY  
Attorney General