

CITIES AND TOWNS - Eligibility of volunteer firefighters for group health insurance;  
EMPLOYEES, PUBLIC - Eligibility of volunteer firefighters for group health insurance;  
FIRE DEPARTMENTS - Eligibility of volunteer firefighters for group health insurance;  
HEALTH - Eligibility of volunteer firefighters for group health insurance;  
INSURANCE - Eligibility of volunteer firefighters for group health insurance;  
MONTANA CODE ANNOTATED - Title 2, chapter 18, part 7; Title 7, chapter 33, parts 41 and 42; Title 39, chapter 3; sections 2-18-701 to 2-18-704, 7-33-4130;  
ADMINISTRATIVE RULES OF MONTANA - Sections 24.16.1001, 24.16.1005(7).

- HELD: 1. Cities of the third class are not required to provide group health and life insurance for volunteer firefighters.
2. Volunteer firefighters who do not work more than 20 hours per week are not eligible to

belong to the group health insurance plan pursuant to Title 2, chapter 18, part 7, MCA.

18 June 1985

Joseph M. Bradley  
City Attorney  
P.O. Box 10  
Laurel MT 59044

Dear Mr. Bradley:

You have requested my opinion on the following two questions:

1. In a city of the third class, may the members of the volunteer fire department be insured by the city's group medical, health, and life insurance contracts under section 2-18-702, MCA, and must the city contribute a portion of each firefighter's premium under section 2-18-703, MCA?
2. If the city is precluded by state law from contributing to the group insurance premiums for members of the volunteer fire department, may such firefighters still participate in the city's group insurance plan by paying their own respective premiums in full, with no contribution from the city?

Fire departments are regulated by Title 7, chapter 33, parts 41 and 42, MCA. Section 7-33-4130, MCA, provides as follows:

(1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents

notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

This statute does not mention cities of the third class. If the Legislature had intended to require cities of the third class to provide insurance for their firefighters, it would not have limited the statute to first and second class cities. I cannot insert what has been omitted. In my opinion, cities of the third class are not required to provide group health and life insurance for volunteer firefighters.

Your second question is whether the volunteer firefighters may individually participate in the city's group insurance plan by paying their own premiums in full with no contribution by the city. The City of Laurel has established a group insurance plan pursuant to sections 2-18-701 to 704, MCA. According to section 2-18-701(2), MCA, a part-time permanent employee is eligible to participate in the group insurance plan if he is "scheduled to work a regular schedule of 20 hours or more a week." The Laurel volunteer firefighters are "on call" twenty-four hours a day and must respond, if possible, to every fire alarm. The time actually spent in training, attending department meetings, and fighting fires has never totaled 20 hours a week. Your question is whether the "on call" status of the firefighters qualifies them as having a regularly scheduled work period of 20 hours or more.

The Department of Labor and Industry has promulgated rules pursuant to the Minimum Wage and Overtime Act, Title 39, chapter 3, MCA. The rules set the guidelines

to be utilized in determining what constitutes "working time." § 24.16.1001, ARM. The subject of "on call" time is discussed in section 24.16.1005(7), ARM, as follows:

On call time. An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

As you have described the practice in Laurel, every firefighter is expected to respond when an alarm is sounded unless it is impossible for him to do so. However, the firefighters are not required to remain somewhere particular, or so close thereto that they cannot use the time effectively for their own purposes. In this situation, the "on call" status of volunteer firefighters is not considered work time, and cannot be used to augment the work period for purposes of section 2-18-701, MCA.

I conclude that volunteer firefighters working less than 20 hours per week do not fit within the definition of "employee" found in section 2-18-701, MCA, and are therefore excluded from the group insurance plan of a third class city established pursuant to Title 2, chapter 18, part 7, MCA. Because they are not eligible to belong to the group, they are not permitted to participate by paying their own premiums, unless they fall within the class of eligible retirees or dependents defined by section 2-18-704, MCA.

THEREFORE, IT IS MY OPINION:

1. Cities of the third class are not required to provide group health and life insurance for volunteer firefighters.
2. Volunteer firefighters who do not work more than 20 hours per week are not eligible to belong to the group health insurance plan pursuant to Title 2, chapter 18, part 7, MCA.

Very truly yours,

MIKE GREELY  
Attorney General