

VOLUME NO. 41

OPINION NO. 29

POLICE - Application of time spent as a special officer to retirement;

POLICE DEPARTMENTS - Computation of time served for retirement;

RETIREMENT SYSTEMS - Purpose of police pension systems, police retirement to benefit active officers only;

MONTANA CODE ANNOTATED - Sections 7-3-4465(1), 7-32-4106, 19-10-301, 19-10-302, 19-10-401(1), 19-10-501 to 19-10-503;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 4 (1979).

HELD: Time served for temporary duty as a special officer counts toward a police officer's

requirements for the retired list under section 19-10-401(1), MCA. The city treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit only active officers who have completed 20 years or more of service.

4 October 1985

Leo Fisher
City Attorney
P.O. Box 238
Whitefish MT 59937

Dear Mr. Fisher:

You have requested my opinion on the following matter:

Does the time served by a police officer on the eligible list for temporary duty count toward that officer's retirement? If so, must the city treasurer withhold from that officer's compensation the amount required to be retained for the police retirement fund?

Your question concerns section 19-10-401(1), MCA, as it relates to a police officer's eligibility for service retirement. The police department has an active list of police officers and an eligible list as required by section 7-32-4106, MCA. The city assigns officers on the eligible list to fill in for members on the active list who are ill or on vacation, or have days off. Appointments to the active list are made from the eligible list. Officers chosen from the eligible list for temporary employment do not contribute to the retirement fund. A temporary officer is considered a special officer under section 7-3-4465(1), MCA.

Section 19-10-401(1), MCA, states:

A person who is employed by any city as a police officer on July 1, 1975, is eligible for the retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank. [Emphasis added.]

This section seems to conflict with the other provisions of Title 19, chapter 10, which make reference only to active officers. 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).

The general purpose for establishing police pension systems is to reward efficiency, encourage police officers to remain in active service, and provide assurance of a decent standard of living upon retirement. Bartels v. Miles City, 145 Mont. 116, 121, 399 P.2d 768, 771 (1965).

When chapter 10 is read as a whole, it becomes clear that this system was established to benefit active officers. Section 19-10-301, MCA, requires the city to contribute to the fund an amount equal to 11 percent of the total salaries of active police officers. Section 19-10-302, MCA, requires the city treasurer to deduct 6 percent of an active officer's monthly compensation for the retirement fund. Retirement benefits are paid to officers removed from the active list to the retired list, as are disability and death benefits. §§ 19-10-501 to 503, MCA.

Since temporary officers do not contribute to the retirement fund or receive benefits from it, it is apparent that the legislative intent was to benefit only active officers.

The question that remains is whether time spent in temporary duty applies toward the required time for retirement.

A previous Attorney General's Opinion relating to firefighters' pension eligibility held that time spent in training and on probation should be figured into the computation of active duty for purposes of retirement. 38 Op. Att'y Gen. No. 4 at 15 (1979). Firefighters in training or on probation were ineligible for membership in the department's relief association. They were not required to make contributions to the association, and could not voluntarily contribute. Id. at 14. Retirement eligibility depended on time spent in active duty for the fire department. Time spent in training

and on probation was considered active duty because these firefighters were fully paid and actively engaged in the business of the fire department. Id. Thus, a firefighter could count this time toward retirement even though no contributions were made to the association.

Likewise, temporary or special officers do not contribute to the police retirement fund. Section 19-10-401(1), MCA, however, allows time served as a special officer, added to time served as a regular and probationary officer, to apply toward the required time for retirement. Time spent on the eligible list, waiting for temporary or active duty, does not apply toward the required time for retirement. This makes sense, as special officers are fully paid and actively engaged in the business of the police department.

THEREFORE, IT IS MY OPINION:

Time served for temporary duty as a special officer counts toward a police officer's requirements for the retired list under section 19-10-401(1), MCA. The city treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit only active officers who have completed 20 years or more of service.

Very truly yours,

MIKE GREELY
Attorney General