VOLUME NO. 42   OPINION NO. 79

POLICE - Allowance adjustment for retired police
officers;
RETIREMENT - Allowance adjustment for retired police
officers;
MONTANA CODE ANNOTATED - Sections 19-9-804, 19-9-903,
19-9-911, 19-9-1011;
REVISED CODES OF MONTANA, 1947 - Section 11-1890(3).

HELD: Section 19-9-1011, MCA, provided for an
             adjustment of the monthly allowance of a
             police officer who retired on or after July 1,
             1975, and before July 1, 1985, in order to
             bring the allowance up to one-half of a newly
             hired active police officer's salary as of
             July 1, 1985, in each city.

                                         26 April 1988

Jim Nugent
City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

      Does section 19-9-1011, MCA, provide for an
      annual cost-of-living increase in the
      allowances of police officers who retired
      between July 1, 1975, and July 1, 1985?

The statute under consideration was enacted in 1985 and
amended in 1987. It now reads as follows:

> Allowance adjustment. (1) A monthly
> allowance paid under section 31(3), Chapter
> 456, Laws of 1977 (formerly section
> 11-1890(3), R.C.M. 1947), 19-9-804, 19-9-903,
> or 19-9-911 to a member retired on or after
> July 1, 1975, but before July 1, 1985, or to
> his surviving spouse or dependent child may
> not be less than one-half the monthly
> compensation paid on July 1, 1985, to a newly
> confirmed, active police officer of the city
> that last employed the member as a police
> officer, as provided each year in the budget
> of that city. [Emphasis added.]

§ 19-9-1011, MCA. It is unclear from the language above emphasized whether the allowance adjustment was intended to be a one-time payment to raise the allowance to one-half the 1985 newly confirmed police officer's salary or to be an annual adjustment based upon newly confirmed police officers' salaries in each city in successive years beginning in 1985.

When a statute is ambiguous, the intent of the Legislature is the controlling consideration in interpretation. McClanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980). In determining the intent of the Legislature, one looks to the plain meaning of the words used in the statute, and if the intent cannot be discerned, one then examines the legislative history. Thiel v. Taurus Drilling Ltd., 42 St. Rptr. 1520, 710 P.2d 33 (1985); Missoula Co. v. American Asphalt, Inc., 42 St. Rptr. 920, 701 P.2d 990 (1985).

Section 19-9-1011, MCA, was enacted as a part of House Bill 754 in the 1985 legislative session under the following title:

> A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING
> AN ALLOWANCE ADJUSTMENT FOR MEMBERS OF THE
> MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM
> RETIRED ON OR AFTER JULY 1, 1975, OR THEIR
> BENEFICIARIES; PROVIDING FUNDING FOR THE
> ADJUSTMENT[.]"

As introduced, the bill clearly would have provided for an adjustment each year based upon a newly confirmed police officer's salary:

> (1) Subject to the restriction contained in
> subsection (2), a monthly allowance paid under
> 19-9-804, 19-9-903, or 19-9-911 to a member
> retired on or after July 1, 1975, or to his
> surviving spouse or dependent child may not be

less than one-half the monthly compensation paid to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

The bill was amended by the House to provide:

(1)   ~~Subject-to-the-restriction-contained-in subsection-(2)~~, a A monthly allowance paid under 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, <u>BUT BEFORE JULY 1, 1985,</u> or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid <u>ON JULY 1, 1985,</u> to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

Upon transmittal of the amended bill to the Senate, the sponsor of the bill, Representative Harry Fritz, explained the bill during a meeting of the Finance and Claims Committee on April 10, 1985, as reflected in the minutes:

It is a bill providing an allowance adjustment for members of the municipal police officers' retirement system for those retiring between July 1, 1975 and July 1, 1985. He said those police officers retiring before the first date have an automatic cost of living increase and retired at 1/2 of the entering salary of a police officer. Before July 1, 1975 there is no problem. Those who retired in 75, 76 and 77 had the inflation period in those years, had the inflation period in those years [sic]. It takes those officers between 75 and 85 and provides a cost of living increase based on the entering salary in 1985. It does not solve the problem permanently because this group will remain static. There is this inequity in the system.

Larry Conner of the Montana Police Protective Association, speaking as a proponent, noted the bill proposed "a one time cost of living increase." Bill Steele, then president of the Retired Police Officers' Association, supported the bill, stating it was "a one time shot" which would bring the group of retirees up to the minimum in 1985, but that the next year they would start falling behind again, and that it would be necessary "to come back and address this again down the

line."   Minutes, Senate Finance and Claims Committee, April 10, 1985, at 8-9.

The affirmative act of amending the bill to add the words "on July 1, 1985," expressed the intent to limit the allowance adjustment to a one-time adjustment based on 1985 active police salaries.   Due to an oversight, the language "as provided each year" was not deleted, leaving an ambiguity in the statute.   A statute should be construed to give effect to the object intended to be achieved.

THEREFORE, IT IS MY OPINION:

> Section 19-9-1011, MCA, provided for an adjustment of the monthly allowance of a police officer who retired on or after July 1, 1975, and before July 1, 1985, in order to bring the allowance up to one-half of a newly hired active police officer's salary as of July 1, 1985, in each city.

Very truly yours,

MIKE GREELY
Attorney General