

VOLUME NO. 43

OPINION NO. 20

POLICE - Officers' eligibility for retirement benefits before age 50;
RETIREMENT SYSTEMS - Eligibility of municipal police officers for retirement benefits before age 50;
MONTANA CODE ANNOTATED - Sections 19-9-801, 19-9-802;
MONTANA LAWS OF 1989 - Chapter 196, section 15.

HELD: A police officer hired after July 1, 1975, who completes 20 years of service before reaching the age of 50 must continue serving as a police officer until he reaches age 50 in order to be eligible for retirement benefits.

June 5, 1989

Charles W. Jardine
City Attorney
201 South Seventh Street
Miles City MT 59301

Dear Mr. Jardine:

You have requested my opinion on the following question:

May a police officer whose eligibility for service retirement depends on section 19-9-801(2), MCA, retire before reaching age 50 if he has completed 20 or more years of aggregate service and waits until he reaches age 50 to receive his benefits, or must he continue serving as a police officer until he reaches age 50 in order to be eligible for the benefits?

Section 19-9-801, MCA, which was amended by House Bill 89 (1989 Mont. Laws, ch. 196, § 15), effective March 20, 1989, now provides:

Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank and has terminated covered employment.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary

officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment.

(3) (a) Except as provided in subsection (3)(b), the retirement allowance may commence on the first day of the month following the member's last day of membership service or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday.

Standing alone, subsection (2) of the statute clearly requires that a police officer hired after July 1, 1975, reach age 50 before he is eligible for his service retirement, but it is ambiguous concerning whether the officer must remain employed as a police officer until he reaches age 50. However, the next section of the act, section 19-9-802, MCA, clarifies the matter. That section states:

(1) A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year. [Emphasis added.]

§ 19-9-802, MCA.

The language of section 19-9-802(2), MCA, requires an officer hired after July 1, 1975, to remain a police officer each additional year between his twentieth year and his reaching the age of 50, in order to be eligible for service retirement.

A section of an act must be interpreted in such a manner as to ensure coordination with other sections of the act and fulfill legislative intent. Hotstetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977). When section 19-9-801(2), MCA, is read in conjunction with section 19-9-802, MCA, the intent of the Legislature that police officers hired after July 1, 1975, work until age 50 is clear.

THEREFORE, IT IS MY OPINION:

A police officer hired after July 1, 1975, who completes 20 years of service before reaching the age of 50 must continue serving as a police officer until he reaches age 50 in order to be eligible for retirement benefits.

Sincerely,

MARC RACICOT
Attorney General