

MEMORANDUM

January 9, 1989

DATE: January 6, 1989
TO: "Old Hire" Police Pension Board
FROM: Claudia Hazelhurst, Personnel Director *ch*
SUBJECT: Rank Escalation - Police Detective

This is in response to John Dickey's November 28, 1988, request concerning the rank escalation for Detective. Mr. Dickey requested, on behalf of all other Police pensioners who retired as Detective, that the Detective be tied to 5% above the rank of Police Officer for rank escalation purposes.

Prior to the Board making a decision in this regard, research was required to ensure that the Board was aware of all impacts associated with this request. Part of that research involved reviewing the situations of other pensioners for similarities which might force similar treatment. In addition, research of state pension statutes was required to ensure that actions in this matter were not otherwise mandated.

FACTS

Mr. Dickey and three other pensioners retired as Detectives. At the time of retirement, these people occupied a specific rank called "Detective". Said rank was eliminated in 1975 and changed to a special assignment. Said assignment was paid the same as Police Officer from 1975 to 1978, carried a 5% above Police Officer pay differential from 1978 to 1986, and in 1986 was again paid the same as the Police Officer rank. Since the Detective classification was dropped, the Board has tied rank escalation for retired Detectives to the rate earned by incumbents serving in Detective assignment.

FINDINGS

- o One other pensioner is in a similar circumstance in that he retired from the rank of Sr. Jail Warden for which there is not a present counterpart. All other ranks from which pensioners retired have present counterparts.
- o Police Pension statutes include no reference to rank escalation. Rank escalation for police was a local initiative intended to match the rank escalation benefit offered to fire pension participants (Attachment A).
- o The fire pension statutes are quite clear with respect to what rank escalation is and how it is to be administered (Attachment B).

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- o Police Pension statute provides the Board full authority to make such rules and regulations as are necessary to execute its duties (Attachment C), such as for the decision which is before it.

ISSUES

- o Central to a decision in this matter is how the Board defines rank escalation and, specifically, rank therein. There is no statutory or other legal definition for rank escalation which is binding on "old hire" police pension. However, it is arguable, given the historical documentation, that police rank escalation was intended to parallel the fire pension provision and that fire pension statute would apply in this regard.
- o Even Fire Pension statute is silent in defining rank for rank escalation purposes.

DISCUSSION

The Board may find it appropriate to tie rank escalation to job content factors versus job title or rank. At the time of Mr. Dickey's, John Becker's and Robert Johnson's retirement, the rank of Detective shared the same range as that of Police Lieutenant. We may assume, therefore, that both positions' levels of authority and responsibility were similar at that time. Conversely, I have been advised by Chief Evers that other retirees, such as some Police Captains, were performing at the level of authority and responsibility of shift commanders which is equivalent to our current Police Lieutenant. Using this approach places a great deal of subjectivity into the process and reliance on historical information, much of which is word of mouth and undocumented. The fourth retired Detective is Fred Landry who, at retirement in 1973, was paid 5% below Police Sergeant, placing even further constraints upon the utility of this approach.

We have been tying Detective retirees rank escalation to the rate earned by incumbents working as Police Detective. There is some question as to whether "working as" should be viewed the same as rank for rank escalation purposes. As of 1975, a distinct classification of Detective was eliminated. It is arguable, therefore, that, beginning in 1975, it may have been appropriate to establish a pay differential for this "abolished rank" for rank escalation purposes. For example, when the Sr. Jail Warden position was abolished, it was tied to a percentage of the Police Officer rank for rank escalation purposes. However, in this case, the City employed no other similar counterparts.

OPTIONS

- o Maintain current posture of tying rank escalation to the rate of pay earned by those working in Detective assignment. That is currently equivalent to Police Officer. Additional cost impact: \$0
- o Consider the rank of Detective abolished as of 1975 and tie the Detective rank to 10% below the rank of Sergeant (or 7.5% above

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Police Officer). Additional cost impact: \$29,422

o Approach rank escalation from the standpoint of job content at the time of retirement, collect available documentation of job duties at the time of retirement and slot retirees into current classifications where appropriate or establish a differential if no similar classifications currently exist. Additional cost impact: Unknown

o Implement Mr. Dickey's request of maintaining the 5% pay differential which the Detective class received until 1986. Additional cost impact: \$4,736

Annual change \$560 per individual Mrs. Johnson

I would like to discuss this information at our January 9, 1989, meeting.

\$59 per month

/ch

3 1/2 pensioners

*1243
1195
48*

CITY OF GRAND JUNCTION, COLORADO
MEMORANDUM

Neua

A

Reply Requested
Yes No

Date
December 19, 1973

To: ~~(#)~~ City Council From: ~~(#)~~ Gerald J. Ashby, City Atty.

On several occasions I have been approached concerning the providing of an escalation clause for the Policemen's Pension Fund, the same clause which exists for the Firemen's Pension Fund. This as you know, would provide that those policemen who had retired would benefit from any raises granted subsequently by the Council to active duty policemen in the same grade as the retired officer. This was accomplished by the firemen sometime ago through the State Legislature amending the Fire Pension Law. The Policemen apparently have not been successful in getting their pension law amended in the same fashion.

My feeling, to this time, was always that the only way the Policemen could secure this benefit would be by working through the State Legislature. Recently, however, the City of Colorado Springs in order to emphasize the total unsoundness of the present Police and Fire Pensions brought an action which attempted to correct this unsoundness. The language in that decision would seem to indicate that home rule cities might provide an escalation clause if they chose to do so, and there are other cities who have so chosen.

These escalation funds do not come out of the pension fund itself but are supplementary payments made out of the general fund annually to the extent necessary for that particular year. For this reason they do not further impair an already actuarially unsound pension system, but, then, neither do they help to correct the problem.

CITY OF GRAND JUNCTION, COLORADO

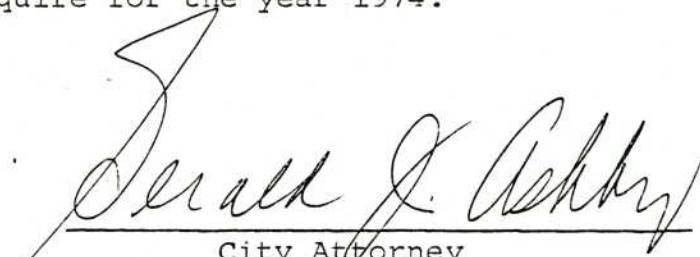
MEMORANDUM

Reply Requested
Yes No

Date _____

To: (From:) _____ From: (To:) _____

Karl Johnson has requested that I prepare a proposed ordinance for submission to the Council. I wanted you to have this memorandum prior to that time. I am also enclosing for your information a chart prepared by Victor Vance indicating what the escalator clause would require for the year 1974.



City Attorney

GJA/s

M E M O R A N D U M

TO: Members of the City Council
FROM: Police Department Employees
SUBJECT: Police Pension Benefits
DATE: January 1, 1974

We, the undersigned members of the Grand Junction Police Department, respectfully request the Grand Junction City Council to amend Article III of the Code of Ordinances to provide:

1. That on and after January 1, 1974 any police officer who is honorably retired, either for reasons of disability or for years of service as provided, shall receive 50% of the salary earned at the time of his retirement and,
2. That such police officer shall be entitled to 50% of any increase that may subsequently be given for the classification under which he retired.

This request is made in order to bring retirement benefits for policemen into equality with those provided for firemen and to provide for a cost of living increase in retirement benefits when such is given to current employees.

The effective date of January 1, 1974 is suggested in order to minimize the financial impact to the city. We would, however, support such a provision being made retroactive to include all presently retired police officers and their widows. On the other hand, there is a 1958 precedent which does not require that such benefits be retroactive. In that year, the law was changed to provide for a contribution from the employee and the city, but benefits granted prior to that time remained the same. The legal authority to make such a change is contained in a memorandum of December 19, 1973 from the City Attorney.

Your favorable consideration of this request will be greatly appreciated.

Respectfully,
Robert A. Greer

Jimmy O. Walsh
 Harvey L. Torby
 Mike Chestnick
 Gary L. Stenger
 Ed Vander Zook
 Douglas K. Rushing
 W.D. Allen
 MIKE CAREY
 Bob Coe
 Robert Amelang

Carl A. Davis
 Meade & Gibbey
 Tom Montgomery
 W.E. Killen
 R.E. Baron
 D.W. Vest
 Gary Richardson
 Charles B. Kinkel
 K. M. Johnson
 Richard W. Jaffard
 John Jackson

Bob Brown
 George Barley
 Ronald E. Gustafson
 George Boyler
 Mary Lou Killen
 Ronald L. Smith

on the retired list, such marriage authorized person, such surviving spouse equal to one-third of the monthly salary and longevity or additional firemen of the rank or comparable, or employee held in the department so long as such surviving spouse subsequent marriage shall have the pension roll or authorizing the grant-like to surviving spouses of firemen 11, 1947, and to surviving spouses are dead on said date, it being the an annuity for all surviving spouses or decrease proportionately to any pay of firemen.

77, p. 302, § 23.

which distinguishes between common-law and statutory marriages, is unconstitutional, as benefits may not be denied a surviving common-law spouse. Carter v. Firemen's Pension Fund, 634 P.2d 410 (Colo. 1981).

Restriction of payments to surviving spouse married to employee previous to employee's retirement application held unconstitutional. Definition defining surviving spouse as one "whom such officer, member, or employee married previous to his application for retirement or previous to April 5, 1945" is unconstitutional and may not be applied. Branson v. City & County of Denver, 707 P.2d 338 (Colo. 1985).

board shall also order the payment appointed guardian of each child of employee of said fire department a child, to continue until such child with surviving spouse dies or there is prescribed but such deceased member, children under eighteen years of age, equal to the full payment to which under section 31-30-509 to be divided by payment of thirty dollars for each child to the guardian of said children with surviving children of a deceased in excess of one-half of the current paid department.

77, p. 302, § 24.

C.J.S. See 62 C.J.S., Municipal Corporations, § 614; 70 C.J.S., Pensions, § 4.

Remarried widow cannot declare a child an orphan and get increased benefits. A surviving child whose mother or stepmother also survives does not become entitled to additional benefits under this section upon the remarriage of the mother or stepmother, although

she, on remarrying, declares the child an orphan. Shearer v. Board of Trustees of Firemen's Pension Fund, 121 Colo. 592, 218 P.2d 753 (1950).

Applied in Carter v. Firemen's Pension Fund, 634 P.2d 410 (Colo. 1981).

31-30-511. Retirement pension. (1) Any officer, member, or employee of said fire department who has served at least twenty-five years of active duty and has attained the age of fifty years shall be retired within thirty days after making application for retirement, except during periods of national emergency, and such person shall be paid a monthly pension equal to one-half the amount of the monthly salary said person received as an officer, member, or employee of said department as of the date of application for retirement. For so long as said officer, member, or employee of said department is in retirement, there shall be added to the amount of said pension one-half of any increase in salary and longevity or additional pay based on length of service granted to the rank formerly occupied by him in said department.

(2) Any officer, member, or employee or former officer, member, or employee of said department who, on April 11, 1947, is receiving a pension or annuity from the fund by reason of retirement shall likewise receive a monthly pension or annuity from the fund equal to one-half of the current monthly salary paid to the rank said officer, member, or employee occupied on the date of his retirement plus one-half of all longevity or additional pay which would have accrued to any officer, member, or employee by reason of similar length of service in the fire department under any pertinent longevity or additional pay provision currently in effect in said city or county and plus one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of his retirement to the rank occupied by him in said department. Said pension shall continue to be paid as long as the officer, member, or employee is in retirement.

(3) (a) When, for any reason, the rank or grade within a fire department is abolished or ceases to exist and an officer or member of such department, on or after April 30, 1963, is in receipt of a pension or annuity from the fund by reason of retirement in such classification, grade, or rank, such officer or member shall receive his regular pension payment for the grade or rank occupied at the time of his retirement, as provided in this part 5. In addition, such officer or member of a fire department shall receive additional benefits as follows: The fraction which such officer's or member's regular pension payment for the grade or rank occupied at the time of his retirement, as provided in this part 5, bears to the regular pension payment for the next higher rank at such time shall be computed; and such officer or member shall receive one-half of any increase in salary and longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed; but if the next higher and next lower ranks or grades of the department receive equal money increases, such officer or member shall receive one-half of any increase without multiplication of the fraction above computed. An officer or member of such department who, on July 1, 1969, is in receipt of a pension or annuity from the fund, by reason of retirement in a rank or grade

which has been abolished or has ceased to exist, shall have his benefits as above described recomputed, and any additional moneys to which he is entitled shall be paid to him as if this provision were in effect at the date of his application for retirement.

(b) The provisions of this subsection (3) shall apply alike to all those who retired under this section and to those who retire under the provisions of section 31-30-508.

Source: R & RE, L. 75, p. 1235, § 1.

Am. Jur.2d. See 60 Am. Jur.2d, Pensions and Retirement Funds, § 43.

C.J.S. See 62 C.J.S., Municipal Corporations, § 614.

Despite age and length of service requirements being satisfied, board still has discretion. Although the conditions of this section with respect to age and length of service have been fulfilled, the board of trustees has the discretionary power exercised to deny a petition for retirement. *Bedwell v. Board of Trustees*, 114 Colo. 475, 166 P.2d 994 (1946).

Escalator clause adjusts pension to keep pace with cost of living. Provision in subsection (3)(a) that "such officer or member shall receive one-half of any increase in salary and

longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed" is known as an escalator clause and is intended to automatically adjust pension payments to keep pace with cost of living and wage increases. *Huff v. Mayor & City Council*, 182 Colo. 108, 512 P.2d 632 (1973).

No authority to alter eligibility requirements. An administrative body does not have discretionary powers to alter eligibility requirements for retirement pension benefits which have been mandated by the general assembly. *Bonacci v. City of Aurora*, 642 P.2d 4 (Colo. 1982).

31-30-512. Funeral expenses. When an active or retired fireman dies without necessary funeral expenses, the board shall appropriate from the fund a sum not exceeding one hundred dollars to the surviving spouse or family or other person paying said expenses for the purpose of assisting the proper burial of said deceased member.

Source: R & RE, L. 75, p. 1236, § 1; L. 77, p. 303, § 25.

31-30-513. Person entitled to pension. No person is entitled to receive any pension from said fund except regularly retired officers, members, or employees of said fire department and their surviving spouses and children under the age of eighteen years.

Source: R & RE, L. 75, p. 1236, § 1; L. 77, p. 303, § 26.

Am. Jur.2d. See 60 Am. Jur.2d, Pensions and Retirement Funds, § 46.

C.J.S. See 62 C.J.S., Municipal Corporations, § 614; 70 C.J.S., Pensions, § 4.

31-30-514. Custodian of funds - books and accounts. The treasurer of the board, as provided in section 31-30-502, and the custodian appointed by the board pursuant to section 31-30-506 shall be the custodians of said pension fund, shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board, or any member thereof, or any other interested person. Said treasurer or custodian,

upon expiration of his term of deliver to his successor all books and other property which has come said fund.

Source: R & RE, L. 75, p. 1237.

C.J.S. See 62 C.J.S., Municipal Corporations, § 614.

31-30-515. Warrants drawn. city and county as are designated of said city or city and county on the treasurer of said city or of said board, for all funds below

Source: R & RE, L. 75, p. 1237.

31-30-516. Warrants - how the fund to any person shall be signed by the president of said thereof. No warrant shall be drawn been duly entered on the records

Source: R & RE, L. 75, p. 1237.

31-30-517. Report of board. make an annual report to the governing reporting the condition of said fund

Source: R & RE, L. 75, p. 1237.

31-30-518. Fund not subject after its order for distribution shall be held, seized, taken, subject of any attachment, execution, judgment or decree, or process or proceeding of this state for the payment of debt, damage, claim, demand, fund. No pension or any part thereof but said fund shall be held and for no other purpose whatever

Source: R & RE, L. 75, p. 1237.

31-30-519. Counsel - municipal attorney to give advice to the board and management of said fund and said board as its attorney in all

- record - report. (1) It is the ed breaches of this part 2 and ions they, or any of them, may mpel the testimony of witnesses s relative to such inquiry, and d to appear and testify and to re called for in such subpoena. nd testify or produce document- the district court for an order ailure to obey the order of the irt. The commission shall keep ations held by it or under its the commission shall be filed sion shall be kept in a separate onable times.

ember 1 preceding each regular report to the governing body clude therein all rules adopted t the purposes of the civil ser-

ant for examination shall pay pose of defraying the expenses ived or collected by the treasury and shall be placed dit of the commission for the examined unless such fee has

mission has the power to make rules and regulations shall be effective until five days after aid city or town.

See 62 C.J.S., Municipal Corpora- 190.

ation. Applicants for appoint- reside in the city and county g the date of their application. relate to the fitness of such nter. No question shall relate ointment shall be affected in iation. Notice of time, place,

and scope of such examination shall be given in said notice published in said paper. No person shall be certified to appointment whose standing shall be less than sixty-five percent of complete proficiency. Preference shall be given to persons honorably discharged from the naval or military service of the United States and whose qualifications are otherwise equal.

Source: R & RE, L. 75, p. 1216, § 1.

Am. Jur.2d. See 15A Am. Jur.2d, Civil Ser- vice, § § 28, 29, 38, 40.

C.J.S. See 62 C.J.S., Municipal Corpora- tions, § 488.

PART 3

PENSION - POLICE - GENERAL

31-30-301. Obligation of state. The general assembly finds and determines that the various policemen and police officers, in saving and protecting the lives and property of the citizens and residents of the state of Colorado, are performing state duties and are rendering services of special benefit to this state and that it is the province, right, and obligation of the state of Colorado to care for members of the police force who are entitled to retirement because of length of service or old age or because they have been injured or disabled in service and also to care for the spouses, dependent parents, and dependent children of such policemen.

Source: R & RE, L. 75, p. 1216, § 1; L. 77, p. 297, § 13.

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 132; 60 Am. Jur.2d, Pensions and Retirement Funds, § 44.

C.J.S. See 70 C.J.S., Pensions, § 2.

Statute does not merely enable municipalities to pass ordinance or charter amendment to establish police pension fund, but statute by its

terms establishes pension system without further municipal legislation. *Benson v. City of Sheridan*. 31 Colo. App. 540, 506 P.2d 401 (1972).

Applied in *Lepore v. Board of Trustees*. 628 P.2d 625 (Colo. App. 1981).

31-30-302. Board of trustees created. In every municipality in this state wherein is maintained a regularly organized and paid police department employing paid policemen and in those municipalities which have one or more marshals performing police duties, there is hereby created and established a board of trustees of the policemen's pension fund. Said trustees shall serve without pay. Said fund is to be derived from the sources and in the manner provided in section 31-30-307. No marshal, nor his dependents, is entitled to any of the benefits or any rights under this part 3 if his police duties do not require at least eighty percent of his working time.

Source: R & RE, L. 75, p. 1216, § 1; L. 79, p. 1203, § 3.

C.J.S. See 62 C.J.S., Municipal Corpora- tions, § 588.

31-30-303. Transfer of certain moneys to policemen's pension fund.

Repealed, L. 79, p. 1206, § 19, effective January 1, 1980.

31-30-304. Personnel of board. The board of trustees of said policemen's pension fund shall consist, except as provided in section 31-30-305, of the mayor, the municipal treasurer, the clerk, and one member of the police department who shall be elected by that department. Said board shall elect from its members a president and a secretary. The municipal treasurer shall be ex officio treasurer of said board and administer the funds provided for in this part 3. Said board shall serve without salary.

Source: R & RE, L. 75, p. 1216, § 1.

31-30-305. Existing boards to continue. (1) In cities having a population of at least one hundred thousand, the board of trustees of the policemen's pension fund shall consist of such persons or officials as may be designated by the charter and ordinances thereof. Said board so designated shall have such powers as may be provided for, and said fund shall be controlled, managed, administered, and applied in accordance with such terms and conditions as may be provided by the charter and ordinances of such cities.

(2) In all other municipalities in the state that now provide by ordinance for a policemen's pension fund or aid or relief funds for policemen and for a board of trustees to govern same, the board of trustees then existing shall have full and complete control of any such municipality's fund as provided for in this part 3.

(3) In municipalities having a population of less than one hundred thousand and not having a policemen's pension fund established or a board of trustees to govern the same, the board of trustees provided for in section 31-30-304 created and established pursuant to section 31-30-302 shall make all necessary rules and regulations for managing and discharging its duties not inconsistent with the provisions of this part 3 shall hear and decide all applications for relief or pensions under the provisions of this part 3, and its action on such applications shall be final and conclusive; except that when, in its opinion, justice demands that said action should be reconsidered, the same may be reversed by said board. A record of said action and all other matters coming properly before said board shall be kept and preserved.

(4) In home rule cities or towns of less than one hundred thousand, when the board of trustees of the policemen's pension fund and the control, management, administration, and application of said fund are provided for by charter and ordinances, the same may be controlled, managed, administered, and applied in accordance with such charter and ordinance provisions.

Source: R & RE, L. 75, p. 1217, § 1.

31-30-306. Payment of fund. Moneys in said policemen's pension fund shall be for the use and benefit of the members, their surviving spouses, dependent children, and dependent parents, and policemen who have been

members in good standing of such at the time of death or injury.

Source: R & RE, L. 75, p. 1217 § 60.

Am. Jur.2d. See 60 Am. Jur.2d, Pension and Retirement Funds, § 68.

C.J.S. See 62 C.J.S., Municipal Corporations, § 588; 70 C.J.S., Pensions, § 10.

Policemen must have been in good standing at the time of death or injury. The language of this section grants and limits pension benefits and fixes the point of time at which the individual or class is determined a beneficiary and it is quite clear that it is intended to cover "policemen who have been members in good standing of the police departments", and the real, significant point of time is, "the time of death or injury". Board of Trustees

31-30-307. Sources of revenue consist of:

(a) All moneys that may be given for the use and purpose for which it may take, by gift, grant, devise, or real estate or interest therein, which the fund is created.

(b) All moneys, fees, rewards, or of every nature and description of moneys or any members thereof.

Source: R & RE, L. 75, p. 1217,

Am. Jur.2d. See 60 Am. Jur.2d, Pension and Retirement Funds, § 65.

C.J.S. See 62 C.J.S., Municipal Corporations, § 588.

Refund of contributions to fund. A home-rule city has authority to contract with its fire

31-30-308. Amount paid - ex member of any paid police department or by reason of service in such capacity disabled and such disability is certified by the board of trustees shall retire upon payment to such person, monthly to the monthly compensation paid of such disability, not to exceed the physical or mental of trustees may personally examine physicians or surgeons to make their findings to the board, which in determining whether said men