

February 27, 1948

Mr. Carl M. Hitt  
City Clerk  
Tucson, Arizona

# LAW LIBRARY

## ARIZONA ATTORNEY GENERAL

Dear Mr. Hitt:

We have your inquiry of January 28, 1948, submitting three questions as follows:

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- "1. Is it mandatory on the Police Pension Board to refund to persons leaving Police service for whatever cause all monies paid into said fund?
  2. If money is to be refunded, at what time should said refund be made:
    - (a) Automatically on the date of separation from service; or,
    - (b) After separation, upon demand of the employee?
  3. Should interest be paid, and at what rate, on money refunded:
    - (a) Computed to date the employee separated from the service; or
    - (b) To date refunded after separation from service?"

Reference to the act creating the police pension fund discloses the following:

Section 16-1807, A.C.A. 1939, reads in part as follows:

"Contents of the fund.- The police pension fund shall consist of:

1. Two (2) per cent of the compensation paid to each member of the department to be deducted from each salary warrant issued in payment for the services of any such member, which shall be refunded to any member who is discharged or otherwise

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separated from the service, together with interest at the rate of three and one-half ( $3\frac{1}{2}$ ) per cent interest compounded semiannually.

2. An equal amount to be paid by the city in which such pension fund is established, and not to be refunded."

In answer to your question No. 1. It is to be noted that the law uses the following language: "which shall be refunded to any member who is discharged or otherwise separated from the service". The amount to be refunded the individual, of course, is the amount which has been deducted from his salary. It is our opinion that the word "shall" used in this case is mandatory; it is a right which is granted to the individual, and that it would be the positive duty of the police pension board to make the refund to the individual without regard to the cause of his leaving the service.

In answer to your question No. 2. While it might be possible for the board to delay the refund until such time as demand is made, it is our opinion that the interest would continue to run on the deposit until such time as it was paid, and therefore, as a matter of policy, it should be tendered as soon as convenient after the date of separation from service.

In answer to your question No. 3. The interest rate provided is three and one-half per cent compounded semiannually, which interest would run upon the two per cent of the compensation paid to the member, total amount deducted from his pay and paid into the fund. Inasmuch as the total amount deducted from the member's pay is all returned to him upon his leaving service, the interest would be upon all of this sum. It is our opinion that the interest would continue until such time as the refund has been made.

Very truly yours,

EVO De CONCINI  
Attorney General

PERRY M. LING  
Chief Assistant  
Attorney General

PML:lh