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Opinion No. 58-10

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ARIZONA ATTORNEY GENERAL

REQUESTED BY:

Yuma County Attorney

OPINION BY:

ROBERT MORRISON, Attorney General

QUESTIONS:

1. Under A. R. S. § 9-923 A. 1., when does the interest of 2 per cent per annum begin?
2. Under A. R. S. § 9-923 A. 7., can cities enact ordinances paralleling the state motor vehicle code to permit the pension board to receive a portion of the fines levied on violations of such ordinances?

CONCLUSIONS:

1. From the time the contribution was placed in the police pension fund.
2. Yes, as authorized by A. R. S. § 28-626 and § 28-627.

Question One

part of: A. R. S. § 9-923 provides that the police pension fund shall consist in

"1. Five 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 a member, which shall be refunded to any member who is discharged or otherwise separated from the service, with interest at the rate of two per cent per annum.

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

When a member is separated from the service, he is to be refunded his contribution with interest at the rate of 2 per cent per annum. Such interest is paid out of the police pension fund.

Article 9, Section 7, of the Arizona Constitution, provides in part:

No city or town "shall ever . . . make any donation or grant . . . to any individual . . ."

Since cities and towns contribute to the police pension fund, they may do so in view of this provision only if the moneys are not used as a gift or donation.

To pay interest on any money refunded except for such time as the refunded money was actually in the police pension fund would be the payment of unearned interest and would constitute a gift or donation contrary to the constitutional provision.

Therefore, it is the opinion of this office that the interest of 2 per cent per annum begins to run from the time the contributions are placed in the police pension fund.

Question Two

Under A. R. S. § 28-626, it is provided that local authorities may adopt traffic regulations which are not in conflict with state laws.

A. R. S. § 28-627 sets forth the powers of local authorities with respect to streets and highways under their jurisdiction.

It is our opinion, therefore, that cities and towns may adopt traffic ordinances as provided by A. R. S. § 28-626 and § 28-627 and that 12 - 1/2 per cent of the moneys collected as fines for violation thereof shall, in a city or town having established a police pension fund, be paid into the police pension fund pursuant to A. R. S. § 9-923 A. 7.

Robert Morrison

ROBERT MORRISON
The Attorney General