

**Volunteer Fire Departments in Unincorporated Towns—
Authority to Receive Money From Insurance for Firemen's
Disability Fund.**

Volunteer fire departments in unincorporated towns held not to have authority to receive money arising from insurance under Sections 5126 and 5127, Revised Codes of 1921, for the use of a Firemen's Disability Fund, there being no such fund in an unincorporated town.

R. S. Mentrum, Esq.,
State Fire Marshal,
Helena, Montana.

My dear Mr. Mentrum:

You have asked my opinion on the following question:

Can volunteer fire departments in unincorporated towns be paid money arising from insurance written on property within such towns under Section 5126 and 5127, R. C. M. 1921, for the use of a Firemen's Disability Fund?

The creation of a Disability Fund is provided for in Section 5117, Revised Codes of 1921, which reads as follows:

"There shall be created and established in each city and town in the state of Montana where there is an established fire department a fund in the city or town treasury, to be known as the 'disability fund,' of the fire department of said city or town."

Section 5119, Revised Codes of 1921, provides for the levying of an annual tax not to exceed one-tenth of one mill on the dollar for the benefit of this fund.

Under Section 5126, Revised Codes of 1921, fire insurance companies are required to include in their annual report to the State Commissioner of Insurance the amount of premiums received by them during the preceding year from insurance written in each *incorporated city*, and the Commissioner of Insurance must certify to the State Auditor the name of each city which has had, for not less than one year, an organized fire department, and which has so reported to him, and the amount of premiums received in each *city* in such year by each fire insurance company.

While Section 5117 above provides for a Disability Fund in "each city and town * * * where there is an established fire department," that fund is to be in the "city or town treasury." Obviously this was intended to apply only to incorporated cities or towns, because only such have a "city or town treasury."

The tax provided for by Section 5119 is to be levied by the "city or town council," a body that is non-existent in an unincorporated town.

When Section 5126 et seq., providing for the payment of a part of the license fees collected from fire insurance companies into such Disability Fund, were enacted as Chapter 129, Laws of 1911, the terms "cities" or "incorporated cities" were used throughout the Act. While these terms might be interpreted to mean "incorporated towns or cities" so as to apply to the municipal corporations included in Section 4959, Revised Codes of 1921, it was plainly not the intent of the Legislature to include therein unincorporated towns, because such have no legal existence as distinguished from the counties in which they are located.

This conclusion is strengthened by the reference in Section 5133, Revised Codes of 1921, to the payment of service pensions from such funds, where are found these words: "any city in this state * * * which is now incorporated, or which may hereafter be incorporated."

It is my opinion, therefore, that the Legislature did not intend to establish any Disability Fund in unincorporated towns, and, there being no such fund in such places, there is no person or organization to which any money, resulting from the provisions of Section 5126 and 5127, can be paid by the State Auditor.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.