

from the general fund back to the disability and pension fund for the purpose of making a distribution to a relief association; this, in the event your opinion is to the effect that a distribution shall be made upon the receipt of the annual report."

Answering the first question, the State Auditor as ex officio insurance commissioner, under Section 6112 R. C. M. 1935, collects license fees from all insurance corporations, associations and societies doing business in the State of Montana. Such license fees are, under Section 5127.1, deposited with the State Treasurer to the credit of a special fund known as the "disability and pension fund" and created for the specific purpose of serving as a fund for the use and benefit of fire department relief associations. Under Section 5127 the State Auditor shall, at the end of each fiscal period of the year, issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing, his warrant for whatever interest such fire department relief association may have in the license fees collected from the insurance companies doing business in such localities. The said section places a minimum amount to which such city or town is entitled of \$100.00.

The fire department relief association becomes a legally existing association by becoming an incorporated body as provided by Section 5117 and upon so attaining a legal existence the said fire department relief association becomes entitled to share in the benefits of the "disability and pension fund" of the state.

The Denton Firemen's Relief Association is a legally existing association by having complied with and having become incorporated under Section 5117 R. C. M. 1935, and is therefore entitled to share in the benefits of the "disability and pension fund" to the extent of at least the minimum as provided by Section 5127, paragraph 2.

While Section 5130 prescribes certain duties and obligations on the part of the secretary and treasurer of a fire department relief association by way of reporting receipts and expenditures, this report in no way aids the state fire commissioner in establishing the amount of funds or premiums or percentages thereon to be collected from

#### Opinion No. 4

#### Firemen—Funds—Disability & Pension—Firemen's Relief Association Funds—Distribution of.

HELD: 1. The State Auditor may distribute fire department relief association funds to a relief association even though such association is delinquent in filing its annual report.

2. A re-transfer of money from the general fund to a special fund, when transferred in error, is not in violation of Section 34, Article V of the Constitution.

December 8, 1938.

Hon. John J. Holmes  
State Auditor and Ex Officio  
Insurance Commissioner  
The Capitol

Dear Mr. Holmes:

Your letter of November 28 submits the following questions:

"1. May the State Auditor make a distribution of fire department relief association funds to a relief association, at and when the relief association files the annual report provided for by Section 5130, even though the report is filed a year after its due date?

"2. In the event that moneys have been transferred from the special fund, known as the 'disability and pension fund,' to the general fund, may the moneys be re-transferred

insurance companies doing business in those particular localities. The only purpose of the report is to inform the auditor that he may keep a check upon receipts and expenditures. Section 5130 provides that the secretary and treasurer of such fire department relief association must make annual reports. No date is set as a limitation and the only penalty which such association might suffer by reason of delinquency in making such report is "no money shall be paid to the treasurer of such fire department relief association until such report is so filed." So they stand the loss of the use of this fund for the period of the delinquency; nevertheless, the insurance commissioner will have collected all funds which necessarily go into the disability and pension fund of the state, including percentages on premiums of business done in the particular locality wherein the secretary and treasurer may have been delinquent with his report.

Section 5126 prescribes the method of the collection on the part of the insurance commissioner:

"The commissioner of insurance shall include in the blank form furnished to each fire insurance company for its annual statement, a list of all such incorporated cities or towns, and each company shall report therein the amount of premium received by it during the preceding year in each incorporated city or town. \* \* \*"

Under Section 5127.1 a special fund was created in our Legislative Session of 1935, under Section 2 of Chapter 15, Laws of 1935. This fund is designated as the "disability and pension fund" and in this fund shall be deposited collections from the insurance companies upon the business done in the State of Montana, and such fund shall remain intact until disbursed on warrants of the State Auditor, payable to the various fire department relief associations of the state, as and when such fire department relief association shall have made its report as provided by Section 5130 aforesaid.

It is my opinion, therefore, in answer to the first question, that the fire department relief association of Denton, even though its report was delayed, which delay was excusable, is entitled to participate and should re-

ceive whatever amounts it may be entitled to from the disability and pension fund of the state for the year 1936.

Answering the second question of your inquiry, the question to me seems largely one of accounting. I do not know how or why any transfer was originally made from the "disability and pension fund" to the general fund but whatever the reason may have been, it was a mistake as far as the Denton Fire Department Relief Association is concerned and returning the money to the disability and pension fund for the purpose of making payment to the Denton Fire Department Relief Association is not in contravention of Section 34, Article V of the Montana Constitution, which reads as follows:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt."

As before stated herein, under Section 2, Chapter 15, Laws of 1935, a special fund was created for the use and benefit of the fire department relief associations of the state, called the "disability and pension fund" and the State Treasurer was directed and authorized under said Act to keep an account of said fund and to pay all warrants drawn by the State Auditor pursuant to the said Act out of the said fund thus established. Our court has passed upon the question in so far as Section 34 of Article V of the Constitution is concerned, in the case of State ex rel. City of Missoula et al., v. Holmes, 100 Mont. 256, 290, as follows:

"It is urged that the provisions of Section 34 of Article V of the Constitution are violated, in that money is directed to be expended from the treasury without any appropriation made therefor by law. The insurance fund is a special fund created by authority of law for a specific purpose. In the case of State ex rel. Veeder v. State Board of Education, 97 Mont. 121, 33 Pac. (2d) 516, 521, it was said: 'As the Act has to do only with special funds to arise from the operations authorized and in connection therewith and devoted to a spe-

cial purpose, it does not violate the provisions of Sections 34 and 39 of Article V, or Section 10 of Article XII, of the Constitution, respecting state moneys and the appropriation thereof. (*Barbour v. State Board of Education*, 92 Mont. 321, 13 Pac. (2d) 225; *State ex rel. Bickford v. Cook*, 17 Mont. 529, 43 Pac. 928).<sup>1</sup> (See, also, *State ex rel. Blume v. State Board of Education*, 97 Mont. 371, 34 Pac. (2d) 515; *State ex rel. Hawkins v. State Board of Examiners*, 97 Mont. 441, 35 Pac. (2d) 116.)”

The procedure necessary to re-transfer from the general fund to the disability and pension fund, as I say, is a matter of accounting but I think it can easily be handled by an adjusting entry. In any event I cannot see that it should require legislative action in so far as the provisions of Section 34, Article V, did not attach.