

**Opinion No. 68**  
**Firemen—Policemen—Tenure of**  
**Office—Municipal Government,**  
**Form of—Civil Service Rights.**

**Held:** The status, tenure in office and civil service rights of firemen and policemen were not changed by any provisions of Chapter 151, Laws of 1947, or by Chapter 152, Laws of 1947, but the same remain the same and apply in all cities and towns in the State regardless of the form of government.

September 29, 1947

Mr. John J. Holmes  
State Auditor and Ex-officio  
Commissioner of Insurance  
State Capitol Building  
Helena, Montana

Dear Mr. Holmes:

You inform me that inquiries received in your office from representatives of various fire and police departments in the State relate to the effect of Chapter 151, Laws of 1947, upon tenure of office of members of the fire and police departments and other benefits previously accrued to such members, especially those in cities operating under a Commission form of government. It would appear from your letter that Chapter 151, Laws of 1947, in some manner was repealed or altered previous acts relating to tenure in the fire and police departments of cities having a Commission form of government.

You have specifically requested an opinion of this office on the following questions:

1. What is the status of all members of the fire department in cities operating under the Commission Form of Government, under the recently enacted law, known as Chapter 151, of the Session Laws of 1947?

2. Do the provisions of Chapter 73, Session Laws of 1943, protect the tenure in office of the Chief and other officers of the fire department after the passage and approval of House Bill No. 161, known as Chapter 151, Session Laws of 1947?

3. What is the status of the Commissioner of Public Safety in cities operating under the Commis-

sion Form of Government, after the passage and approval of House Bill No. 161, known as Chapter 151, Session Laws of 1947?

4. Has the police commission, which is provided for under Chapter 390, Revised Codes of Montana, 1935, any power or authority over the fire department?

Since the adjournment of the Thirtieth Legislative Session of 1947— which enacted legislation amending certain sections of laws pertaining to firemen and policemen in an effort apparently to make the provisions of these statutes applicable to the different forms of city government adopted during the past several years—this office has had inquiries on different questions raised as a result of such new enactments. It would, therefore, seem pertinent at this time, as far as possible, to consider these several questions, in an effort to clarify the present status of firemen and policemen—insofar at least as tenure, wages and supervision are concerned.

While the specific questions asked concern the interpretation of specific statutes, yet, it is a well recognized rule of construction all acts relating to the same subject, or having the same general purpose as the statute being construed, should be read in connection with such statute. (*State v. Bowker*, 63 Mont. 1, 205 Pac. 961.)

#### As to Firemen:

Chapter 151, Laws of 1947, amends Sections 5109, 5110 and 5111 of the Revised Codes of Montana, 1935.

The amendments to Sections 5110 and 5111 merely inserted words to make the provisions thereof applicable to the commission form of government by inserting in proper places the words "commission" and "manager." By such amendments, the commission under the commission form of government has the same power as the council under the aldermanic form, and the manager the same power as the mayor. The amendments have no other or further effect.

However, Section 5109, as amended by Chapter 4 of the Laws of 1937, was amended by Chapter 151, Laws of

1947, in the following words: (the emphasized portion is the new matter);

"5109. There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this Act provided, said Act (being Sections 5109 to 5140, Revised Codes of Montana, 1935, as amended, and the provisions of Chapter 15 of the Laws of the twenty-fifth legislative assembly, 1937, and all of the provisions of Chapter 136 of the Laws of the twenty-sixth legislative assembly, 1939,) shall in all respects be applicable to and shall govern and control fire departments in every such city or town organized under whatever form of municipal government now existing or hereafter provided for or whichever said city or town shall adopt, the provisions of any law to the contrary notwithstanding."

Firemen regularly appointed and confirmed as provided by statute, have a definite tenure, and may not be removed except for cause as provided by statute. (Section 5111, Revised Codes of Montana, 1935.) This statute is a civil service law and has been so recognized by our Supreme Court in the case of State ex rel. Drifill v. City of Anaconda, 41 Mont. 577, 580, 111 Pac. 345, where the Court said: "The statute, however, is a civil service law, and does secure to every paid fireman a right to his position."

The statute granting a tenure and civil service rights to firemen has remained in force without change or amendment from 1899. Chapter 151, Laws of 1947, does not change this feature of Section 5111 and hence firemen duly and regularly appointed and confirmed and in service at the date of the enactment of Chapter 151, have tenure and civil service rights.

The amendment to Section 5109 quoted above, in clear and plain language expresses the will of the legislature that in every city and town of the state the fire department shall be organized, managed and controlled as provided by Sections 5109 to 5140, Revised Codes of Montana 1935, and Chapter 15 of the laws of 1937, and

Chapter 136 of the Laws of 1939. None of these sections or session laws changes the law as to tenure and civil service rights of firemen. Certainly, there is nothing in Chapter 151, Laws of 1947, which makes any changes in these respects; but on the contrary, as pointed out, the section definitely states that the provisions of the statute relating to tenure and civil service rights of firemen of organized departments in every city and town, regardless of the form of government, shall be applicable. As if to make this intention more clear, the legislature, in amending Section 5110, added the following pertinent phrase, "the provisions of any law to the contrary notwithstanding."

Chapter 73, Laws of 1943, amends Section 5384, Revised Codes of Montana, 1935, relating to supervisory powers of mayors and city councilmen and provides for the election and removal of city officers and assistants and for the tenure of office of the chief and other officers of the fire department in cities having an aldermanic and a commission form of government. The specific amendment is as follows: "The tenure in office of a chief of the fire department and other officers of the fire department shall be governed by the provisions of Section 5110 and 5111 of this code." Previous to this amendment of Section 5384, some doubt may have arisen as to the status of the chief and other officers of the fire department in cities and towns having an aldermanic or commission form of government. The amendment was evidently made to clear up such doubt. The language of the amendment is clear and unambiguous, needs no interpretation. Hence, the tenure of these officers is as provided by Sections 5110 and 5111. Chapter 151, Laws of 1947, does not change this in any respect. On the contrary, as pointed out above, the provisions of the amendment to Section 5109 emphasize the intention of the legislature to retain these provisions.

It may be noted, however, that prior to the enactment of Chapter 4, Laws of 1937, Section 5109, Revised Codes of Montana, 1935, providing for the organization, establishment and

supervision of fire departments, read as follows:

"The council of cities and towns shall have the power to establish a fire department, and prescribe and regulate its duties. . . ."

Under this statute, it was permissive for cities and towns to establish fire departments, and authority was granted to the councils to prescribe and regulate their duties. Section 5109, however, was amended by Chapter 4, Laws of 1937, and reads as follows:

"(a) There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this act provided."

The statute was made mandatory upon every city and town, regardless of its form of government.

It is significant that, with this language in the statutes, the legislature in 1947 specifically said in Section 1 of Chapter 151, that the fire departments in every city and town (regardless of form of government) shall be organized, managed and controlled "as in this Act provided. . . ." And so that there would be no misunderstanding as to what it meant by "this Act" the legislature specifically defined the term by setting out the statutes it meant to be included within the term "this Act." As theretofore pointed out, the legislature then went one step further in order to make its meaning clear and added the phrase, "the provisions of any law to the contrary notwithstanding."

#### **As to Policemen.**

The same reasoning herein applied to the statutes applicable to firemen may be applied to those applicable to policemen. (See Chapter 152, Laws of 1947.)

It is therefore, my opinion that the status, tenure in office and civil service rights of firemen and policemen were not changed by any provisions of Chapter 151, Laws of 1947, or by Chapter 152, Laws of 1947, but the same remain the same and apply in all

cities and towns in the State regardless of the form of government.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General