Opinion No. 40

Cities and Towns—Rural Fire Districts, Methods of Financing Fire Equipment

Held: There are only two methods of financing equipment for a fire district, and these are:
(1) The levying and collecting of the special tax provided in Section 11-2008, Revised Codes of Montana, 1947, prior to the purchase of the equipment; thereby operating upon a cash basis; or,
(2) The selling of bonds as provided in Section 11-2010 through 11-2019, Revised Codes of Montana, 1947.

October 11, 1951.

Mr. Joseph B. Gary
Deputy County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Gary:

You have informed me that the fire company of a new rural fire district desires to purchase fire fighting equipment and wants to know what methods may be employed to finance the purchase of this equipment.

Sections 11-2001 through 11-2031, Revised Codes of Montana, 1947, contain the law applicable to fire protection in unincorporated towns and in rural fire districts.

Section 11-2008, supra, authorizes the board of county commissioners to establish fire districts in any unincorporated territory, town or village whenever requested in writing by the owners of fifty per cent or more of the area included within the proposed district who constitute a majority of the tax paying free holders, as shown by the last completed preceding assessment roll. This section further authorizes the county commissioners to levy a special tax upon all property within such districts for the purpose of buying apparatus and maintaining the fire departments of any such district, or for the purpose of paying to a city or town the consideration provided for in any contract with the council of such city or town for the extension of fire protection service to property within such district. This tax money collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its president or chief officers.

Section 11-2010, makes the board of county commissioners the ex-officio board of directors of the fire district. This section further provides:

> ". . . The board of directors of any duly established fire district in unincorporated territories, towns or villages within this state shall, whenever a majority of the directors so decide, submit to the electors of the district the question of whether the board shall be authorized to issue bonds to a certain amount, not to exceed three percent (3%) of the percentum of the assessed value of the taxable property in such district, and bearing a rate of interest not exceeding six percent (6%), for the purpose of purchasing fire equipment, necessary lands, erecting building for fire purposes, acquiring a water supply, purchasing or otherwise acquiring or constructing a water system and establishing pipe lines. No such bonds shall be issued unless a majority of all the votes cast as any such election shall be cast in favor of such issue."

Sections 11-2011 through 11-2019 supra give further details in connection with the bond election, and the issuance and retirement of the bonds. In Section 11-2015 supra of these statutes it is provided that if bonds are issued the county commissioners at the time of making the levy of taxes for county purposes, **must** levy a tax for that year upon the taxable property in the fire district for the interest and redemption of the bonds.

From the foregoing law it is shown that two methods of financing the purchase of fire fighting equipment are permitted. The first is to levy a tax and collect the money before making the purchase, thereby operating on a cash basis. Second, if the district wishes to become indebted for the equipment, bonds must be sold. These two methods are exclusive. Where a power is conferred and the mode in which it is to be exercised is prescribed, such procedural method must be followed. State ex rel. Daly v. Dryburgh 203 P. 508, 62 Mont. 36; State v. Stark 52 Pac. (2d) 890, 100 Mont. 365.

In State ex rel. Peninsula Security Co. v. Board of County Commissioners 62 Mont. 69, 202 Pac. 1108, the court held that the power to establish a fire district and levy the special tax is discretionary and not mandatory. Hence, if any other method were used to finance the purchase of equipment, such as registered warrants or the borrowing of money without a bond issue, it is entirely possible that the county commissioners would not see fit to levy the tax to pay the warrants or the indebtedness. However, if bonds are sold the commissioners must levy a tax to pay the bonds. See Section 11-2015.

These two prescribed methods of financing constitute a reasonable check upon the expenditure of the fire district. By pursuing a cash basis the board of commissioners, who are elected by the people, have the discretion to determine whether the money shall be raised or not. Before bonds are sold, the qualified electors of the fire district must agree to the indebtedness. Commenting on this control the Supreme Court said in State ex rel. Peninsula Security Co. v. Board of County Commissioners, supra:

"In view of the laxity of the provisions of the section providing for the organization of the volunteer hose company, in which there is no limitation whatever as to the number of persons that may so organize the company, whether representative of the whole community or not, and even without the requirement that they be residents of the community, whereby they would be enabled to take action to force a levy of a tax upon all the property of the community without limitation as to amount if the provisions of Section 2081, as amended, are mandatory, there would be no possible check upon the expenditures of such a company so organized and no protection whatever to the citizens of the community against an excessive and extravagant taxation. It is inconceivable that the legislature intended that a comparatively small number of persons should have the power and authority to compel the levy of a tax upon a majority of the people within the same community without their consent and without such a tax being authorized by some responsible authority having discretion to review the circumstances and determine whether or not a company so organized may be truly representative of the community in which it is organized and thereby speak the sentiments of the community as a whole; and yet such would be the result if the board of county commissioners had no discretion in the matter. By holding that the Board of county commissioners has such a discretion, the only method by which a reasonable check can be had upon taxation for fire department purposes in unincorporated towns is preserved."

It is therefore my opinion that there are only two methods of financing equipment for a fire district, and that these are:

(1) The levying and collecting of the special tax provided in Section 11-2008 prior to the purchase of the equipment, thereby operating upon a cash basis, or (2) The selling of bonds as provided in Sec. 11-2010 through 11-2019, R. C. M. 1947.

Very truly yours,
ARNOLD H. OLSEN
Attorney General