Volunteer Fire Departments, Members Of. Exemptions from Road and Poll Tax. Certificate of Membership. Assessment of Mortgages of State Banks.

1. Members of Vounteer Fire Departments organized under Section 3232 and 3233, are exempt from road and poll tax. Failure to file a certificate giving the names of the members of such company every three months does not deprive those who are still active members of the company of such exemptions.

2. Mortgages of state banks are secured credits from which the bank may deduct solvent debts. Excess of credits after deducting of solvent debts must be taxed. Debts can be deducted from nothing but credits.

Helena, Montana, July 19th, 1906.

Hon. C. R. Stranahan, County Attorney, Boulder, Montana.

Dear Sir:—Your letter of the 11th inst., in which you submit two questions to this office for opinions thereto, received. The first question is:

"Are the members of a Volunteer Fire Department organized pursuant to Sections 3232 and 3233 of the Political Code liable for the payment of a road tax where the certificate of membership required by said Section 3232 to be filed every three months was not filed for a period of nine days after it should have been?"

From your letter it appears that the Secretary of the Fire Department should have filed the certificate giving the names of the members of the company on the 9th day of June, but neglected to do so until the 18th of that month. There is no provision in the law to the effect that upon the failure to file this certificate at the time therein designated that the Fire Department is disorganized or that the members thereof, by reason of such failure to file the certificate are deprived of their exemptions from road tax and poll tax. You are, therefore, advised that every portion who is a member of the fire department and whose name appears on the certificate filed three months before, to-wit: on March 9th, and also on the certificate filed June 18th, is entitled to his exemptions from such tax, and any new member who joined the department after the filing of the certificate on March 9th is entitled to his exemptions from such tax on and after June 18th, the date of the filing of the cerificate containing his name, provided he has not theretofore paid or worked out his tax.

Your second question relates to the assessment of mortgages held by State Banks.

The assessment of State banks has been very fully discussed in the recent case of Daly Bank & Trust Company v. Board of Commissioners, 81 Pac. 951. Under the law, as construed by this decision, the bank has a right to deduct solvent debts, secured and unsecured, from solvent credits, secured and unsecured. Mortgages held by the bank would come under the class of secured credits. Deposits of the bank would be classified under the head of debts and the bank would have the right to deduct such debts from its credits, but it would have no right to classify money on hand as credits. It should be assessed with all real estate, money on hand, mortgages, and personal property of every kind and description, the same as the property of a private individual. If the debts of the bank, including those to depositors, exceed the amount of solvent credits of the bank, it cannot add money or any other property to such credits before deducting such debts therefrom for the purpose of getting deductions to the full amount of its debts. On the other hand, if the solvent credits of the bank exceed the solvent debts, the bank should be taxed with the excess of credits after deducting its debts.

We have rendered no opinion directly discussing the matters referred to by you relating to assessment of State Banks.

Very truly yours,

ALBERT J. GALEN,

Attorney General.