

Cities and Towns—Disincorporation—Population—State Examiner Census.

Sections 4961 and 4974, R. C. M. 1921, are mandatory and not directory.

The state examiner must examine the books of incorporated cities and towns regardless of the population thereof.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

December 30. 1924.

My dear Mr. Skelton:

You have requested my opinion whether sections 4961 and 4974, R. C. M. 1921, are mandatory.

It is my opinion that both of these sections are mandatory and that this is made manifest by the use of the word "must" in each section.

Of course, as to section 4974 the duty to disincorporate does not exist until the census shows that the population is less than 300 inhabitants. This census, as stated in the statute, may be that of the United States, the State of Montana, or of the city or town itself, taken pursuant to subdivision 77 of section 5039, R. C. M. 1921.

You have also asked whether your department is compelled to examine the books of cities and towns having a less population than 300 inhabitants.

The duties of the state examiner with reference to examination of the books of cities and towns is found in section 215, R. C. M. 1921, which provides:

“The state examiner, in addition to the duties now imposed upon his office, shall have the power and authority, and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns, and the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers.”

It is my opinion, therefore, that so long as the city or town is incorporated it is your duty under the statute to make an examination of its books regardless of its population.

Very truly yours,

L. A. FOOT,

Attorney General.