

**Firemen's Disability Fund—State Fire Marshal—Funds—  
Cities and Towns—Duties—Taxation.**

Section 5119 R. C. M. 1921, as amended by the laws of 1927, is mandatory and not optional.

George P. Porter, Esq.,  
State Auditor,  
Helena, Montana.

June 23, 1927.

My dear Mr. Porter:

You have requested my opinion on the following question:

“Is section 6119 R. C. M. 1921, as amended by the session laws of 1927, optional or mandatory?”

Section 5119, as amended, provides as follows:

“For the purpose of maintaining said disability and pension fund of such Fire Department Relief Association, the city or town council may in the manner provided by law and at the time of the levy of the annual tax, levy a special tax of not to exceed one-tenth of one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of the said city or town, which said tax shall be collected as other taxes, and when so collected shall be paid into the disability and pension fund of the Fire Department Relief Association in said city or town.”

This section must be read in connection with section 5117, which provides that “there shall be created and established in each city and town in the State of Montana, where there is an established fire department, a fund in the city or town treasury, to be known as the ‘disability fund’ of the fire department of said city or town.”

It is at once apparent that it is mandatory upon each city or town where there is an established fire department to create the disability

fund therein mentioned, and that section 5119 simply provides the manner in which this fund may be raised.

An analogous situation to the one in question was presented to the supreme court of the United States in the case of *Rock Island County Supervisors v. United States*, 71 U. S. 435, and in discussing this question the court said:

“When a power or authority is given by statute to public officers in permissive language, as that they ‘may’, if deemed advisable, do a certain act, such as levy a tax for a special purpose, the language will be regarded as peremptory; and the court further declares that the conclusion to be derived from all authority is that where by statute the power is given a public officer in language permissive in form, if public interests or individual rights call for its exercise, it must be considered as peremptory. What they are empowered to do for the public or a third person the law requires shall be done.”

See also:

*Follmer v. Nuckolls County Co.*, 6 Neb. 204;  
*State v. City of St. Louis*, 50 S. W. 1101.

It is therefore my opinion that section 5119 R. C. M. 1921, as amended by the laws of 1927, is mandatory and not optional.

Very truly yours,

L. A. FOOT,  
Attorney General.