

**Cities and Towns — Disincorporation — Firemen's Relief Fund.**

When a town having no firemen's relief association is disincorporated the disability fund of the fire department, when

there are no outstanding claims against it, should be used as other funds of the municipality for the liquidation of the indebtedness of the city or town.

George P. Porter, Esq.,  
State Auditor and Commissioner of Insurance,  
Helena, Montana.

June 21, 1929.

My dear Mr. Porter:

You have submitted the following statement of facts: Lambert was an incorporated town in Richland county, Montana. The disability fund of the fire department of said town had in it approximately \$400 which was used to purchase registered warrants of the town. The town has now been disincorporated. The warrants have been called for payment.

You request an opinion as to whom the county treasurer shall issue warrants in payment of these called warrants. I understand there are no existing claims payable out of the said disability fund.

My understanding is that the fire department of the town of Lambert at no time organized a fireman's relief association as authorized by law and this understanding is confirmed by the reports made by the town to the state auditor. The disability fund was therefore kept in the treasury of the town and administered by a board of trustees of said fund consisting of the mayor, clerk and attorney of the town, the chief of the fire department and one member of the fire department. (Section 5120 R.C.M. 1921).

The law provides that the disability fund shall consist of moneys which may be derived from the levy of an annual tax upon the property within the town, gifts and donations and moneys derived from the state of Montana as provided for in Section 5127. These moneys are public moneys belonging to the municipality to be used only for the special purposes mentioned in the statute; they are a part of the city treasury and any investments of said fund by the trustees are likewise a part of the city treasury. (Section 5121).

When the town was disincorporated, it became the duty of the town treasurer to turn over all moneys in his hands to the county treasurer to be applied by him in payment of the indebtedness of the said town. All other property owned by the town is required to be delivered to the board of county commissioners to be sold and disposed of for the purpose of paying such indebtedness. (Section 4975). If any indebtedness remains after the application of the moneys and property to the payments of the debt of the city, the county commissioners must continue to levy a tax upon the property within the town for the purpose of paying the remainder of said indebtedness. (Section 4974).

These registered warrants of the town which were purchased by the trustees with the moneys in the disability fund are not money but are property belonging to the said disability fund. They are therefore not to be delivered to the county treasurer, but to the county commissioners. Inasmuch as these warrants are called for payment (I presume in their

regular order of registration) the county commissioners need not dispose of them, but should present them to the county treasurer for payment.

The moneys derived therefrom should then be deposited with the county treasurer. If there were any claims to be paid out of said fund it would be the duty of the county treasurer to keep the moneys so received upon these warrants in the disability fund for the payment of the claims. I understand, however, that there are no claims payable out of said fund. The fund, therefore, is available for the liquidation of the general indebtedness of the town, and the moneys when deposited with the county treasurer by the board of county commissioners should be credited to the general fund of the town and made available for the payment of the outstanding indebtedness of the town.

This opinion is written, as stated above, upon the assumption that there was no firemen's relief association organized in Lambert, and the question of how the matter should be handled, if there was such an association, is not covered by this opinion.

Very truly yours,

L. A. FOOT,  
Attorney General.