

**Opinion No. 259.**

**Volunteer Firemen—Road and Poll  
Tax—Exemption.**

HELD: Volunteer firemen on active duty and those having certificate of service, are exempt from poll tax, road tax and head tax of every description.

March 10, 1938.

Hon. John J. Holmes  
State Auditor and Ex-Officio  
Insurance Commissioner  
The Capitol Building  
Helena, Montana

Dear Sir:

Your inquiry is, is a volunteer fireman exempt from road-tax, poll-tax, and head-tax?

Section 5144, Revised Codes of Montana, 1935, provides:

“ \* \* \* The officers and members of unpaid fire companies regularly organized and exempt firemen are entitled to the following privileges and exemptions, viz: Exemption from payment of poll-tax, road-tax, and head-tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. Every fireman who has served five years in an organized company in this state is an ‘exempt fireman,’ and must receive from the chief engineer of the department to which he belonged a certificate to that effect. \* \* \*”

Prior to 1937 it seemed that fire departments did not come within the police powers of the state, and therefore were beyond the control of legislative action. Section 4 of Chapter 4, Laws of 1937, however, was enacted

for the primary purpose of putting fire departments under the police power of the state, thereby correcting the errors as set out in State ex rel. Kern et al. v. Arnold (100 Mont. 346). It might be said that this particular legislation referred only to the amending of Chapter 391 of the Laws of 1937. It is the construction of this office, however, that as far as police powers are concerned, it was the intention of the legislature that the amendment applied as well to Chapter 392.

From the wording of the section pertaining to volunteer firemen and their exemptions, namely Section 5144, it is perfectly evident that these exemptions were something granted by the State in the nature of a bounty in order to encourage the creation and maintenance of a volunteer fire department. It was a laudable purpose and not contrary in any way to equity or natural justice.

Cities and villages are mere civil divisions of the State and simply exercise certain delegated powers which the State can withdraw at pleasure, and can resume exercise of subject to Constitutional restrictions.

The language of the statute is clear and comprehensive. There is no ambiguity about it and we feel that the legislative purpose is clearly expressed therein. A volunteer fireman, either serving, or who has received his certificate for service, as in the section provided, is exempt from poll-tax, road-tax, and head-tax of every description.