

Opinion No. 118**Fire District—Unincorporated Towns
—Tax Levy.**

HELD: The establishing of fire districts in unincorporated towns or villages is within the discretion of the county commissioners of the county in which such town or village is situate.

A fire district having been established, a special tax not exceeding two mills on the dollar of assessed valuation of property may be levied upon all the property of such district for the purpose of buying apparatus and maintaining the fire department of such district.

August 16, 1939.

Mr. Walter T. Murphy
County Attorney
Superior, Montana

Dear Mr. Murphy:

Your inquiry of July 29th is in effect, "does the law provide any limit on the mill levy that can be made upon a fire district in unincorporated towns?"

Section 5148, R. C. M., 1935, provides that the board of county commissioners is authorized to establish fire districts in any unincorporated town or village. The question as to whether or not this was mandatory on the board of county commissioners came before the Supreme Court in the case of *State v. Board of County Commissioners*, 62 Mont. 69, 71, and in this case the court held that this was a matter of discretion with the board and not a mandatory obligation. The section makes provision for the levy of taxes for the purpose of buying apparatus and maintaining the fire department in such district but makes no limit as to the amount of levy. In the case cited the court went on at some length to show a possible abuse of Section 5148, in the event it became mandatory upon the board to establish such fire districts, there being nothing limiting the number of volunteer firemen nor anything in the section pertaining to the amount of taxes, so that excessive and extravagant taxation would easily result by holding this section a mandatory obligation. It now serves as a method of check upon taxation for fire department purposes in unincorporated towns. This particular section was enacted as Chapter 81, Laws of 1907. The case of *State v. Board of County Commissioners* was decided in 1921.

Under Chapter 26, Laws of 1927 (Sec. 5116.1, R. C. M., 1935), an act was passed, the title of which reads: "An Act Authorizing Cities and Towns Which Do Not Have a Paid Fire Department to Levy a Special Tax Not Exceeding Two (2) Mills on the Dollar of Assessed Valuation of Property in Such Cities and Towns for the support and Maintenance of Volunteer Fire Departments and the Purchase of Equipment Therefor." This chapter has reference to volunteer fire departments and the purchase of equipment therefor, whether the same be in incorporated or unincorporated towns, and it is my opinion that the commis-

sioners cannot provide for a levy in excess of two mills on the dollar of the assessed valuation of the taxable property of such city or town.