

**Opinion No. 217.**

**Investment of Surplus Funds—  
Fire Department Relief  
Association.**

HELD: The surplus funds of the Fire Department Relief Association cannot be invested in school district warrants.

March 22, 1940.

Honorable John J. Holmes  
State Auditor and Ex-officio  
Insurance Commissioner  
State Capitol  
Helena, Montana

Dear Sir:

Your letter of March 19 asks the following question: May a fire department relief association invest its surplus funds in school district warrants?

Section 5121, R. C. M., 1935, prescribes the powers and duties of the board of trustees of a fire department relief association, which section in so far as it is pertinent to this question reads as follows:

"\* \* \* When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county, or city as are recommended by the state auditor and approved by the state examiner \* \* \*."

It is a fundamental principle that the legislature of this state possesses plenary legislative power and authority, except in so far as it is limited by the constitution of the United States, of this state, by treaties made and statutes enacted pursuant thereof. (State ex rel Evans v. Stewart, 53 Mont. 18, 20.)

Section 5121, R. C. M., 1935, does not transgress any provision of the Constitution of the United States, the Constitution of the State of Montana, nor of any treaty and therefore comes clearly within the power of legislative action.

Our legislature acted under Section 5121 and definitely set out the power and authority of the board of trustees of the firemen's relief association therein in the matter of the investment of surplus funds, which section does not include school district warrants.

Section 10519, R. C. M., 1935, reads as follows:

"In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance con-

tained therein, not to insert what has been omitted, or to omit what has been inserted."

59 Corpus Juris, page 228, has the following to say:

"\* \* \* Where the deposit, lending, or investment of funds is regulated by statute, they must be administered in accordance therewith, \* \* \*." (Citing State v. Stewart, 53 Mont. 18, as well as decisions from many other states.)

It is my opinion, then, that the fire department relief association cannot invest its surplus funds in school district warrants.