

No. 313

FIRE DEPARTMENTS—FIRE DISTRICTS—INCORPORATED CITIES—UNINCORPORATED TOWNS AND VILLAGES—TOWNS—VILLAGES—CITIES

- Held:**
1. The taxpayers outside of the city limits of an incorporated city can petition the county commissioners to create a fire district, provided such district is established within the limits of an unincorporated town or village or any territory lying within ten miles of the limits of any incorporated city.
 2. Such district—when so established—can contract with an incorporated city for the use of the equipment of the incorporated city, provided such city by ordinance or resolution duly authorizes the same.
 3. The paid firemen of an incorporated city—while engaged in fighting fires outside of the city limits and within the limits of a fire district in an unincorporated town or village, or any territory lying within ten miles of the limits of any incorporated city, under a contract between such organized districts and the city—are performing services in line of duty and are entitled to all benefits as members of the fire department relief association.

December 11, 1941.

Mr. John J. Holmes
State Auditor and Ex Officio
Insurance Commissioner
State Capitol
Helena, Montana

Dear Mr. Holmes:

Recently you requested an opinion from this office on the following questions:

- "1. Can the taxpayers outside of the city limits of an incorporated city petition the county commissioners and create a fire district?"
- "2. Can this district contract with the city for the use of the city fire department?"
- "3. Would the paid fireman of an incorporated city who is ordered by the mayor or officers in charge of the fire department to fight fires outside the city limits be entitled to receive benefits from the Fire Department Relief Association if injured on such a fire?"

Section 5148, Revised Codes of Montana, 1935, provides:

"Fire protection—establishment of fire districts. The board of county commissioners is authorized to establish fire districts in any unincorporated town or village, or any territory lying within ten (10) miles of the limits of any incorporated city whenever requested in writing so to do by the owners of fifty per cent (50%), or more, of the area included within the proposed district and who constitute a majority of the taxpayers who are freeholders of such territory and whose names appear upon the last completed preceding assessment roll; and at the time of the annual levy of taxes may levy a special tax upon all the property within such district for the purpose of buying apparatus and maintaining the fire department of any such district, and such tax must be collected as are other taxes. All moneys so collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its foreman. In the drawing of such warrants against the funds so collected by the county treasurer, the foreman and treasurer of the fire company shall be governed by the by-laws of such fire company. It is provided that the provisions of this section shall not apply to payment of bonds and interest thereon as provided by Sections 5149 to 5158 of this code."

Sections 5148 to 5158, Revised Codes of Montana, 1935, provide in effect the board of county commissioners can establish such districts when presented with a petition signed by fifty per cent of the property owners of an unincorporated town or village, or any territory lying within ten miles of the limits of any incorporated city, and these sections prescribe the procedure to be followed in the creation of such districts. You will note the fire district which can be created by the county commissioners is in an unincorporated town or village, or any territory lying within ten miles of the limits of any incorporated city. Consequently, my answer to your first question is that the taxpayers outside of the city limits of an incorporated city, if within an unincorporated town or village, or any territory lying within ten miles of the limits of any incorporated city, can petition the county commissioners and create a fire district.

Sections 4958 and 5039.62, Revised Codes of Montana, 1935, in effect provide incorporated cities and towns may hold, lease, use and enjoy property of every name or description, and such cities or towns have the power to make any and all contracts necessary to carry into effect the powers granted by the Code. By virtue of these two sections, it is my opinion an incorporated city could contract with such a fire district for the use of the fire equipment of the incorporated city, but before doing so the council of the incorporated city would have to pass an ordinance or resolution by a two-third vote of all of the members of the council as is provided for in Section 5039.61, Revised Codes of Montana, 1935, as amended by Chapter 35, Laws of 1937.

Section 5109, Revised Codes of Montana, 1935, provides that "The council of cities and towns shall have power to establish a fire department, and prescribe and regulate its duties . . ." Having power to contract for the services of the fire department in regularly organized fire districts outside its boundaries, and, under Section 5109, supra, having power to regulate and prescribe the duties of the fire department, it follows firemen while performing duties in such an organized fire district under such a

contract are acting as members of the fire department of such city in line of duty and entitled to all benefits as members of the fire department relief association.

It is therefore my opinion:

1. County commissioners, upon petition of taxpayers owning fifty per cent or more of the area of any incorporated town or village, or any territory lying within ten miles of the limits of any incorporated city, may establish a fire district as provided under Sections 5148 to 5158, Revised Codes of Montana, 1935;
2. A city having a paid fire department may contract with such organized fire district for services of the paid fire department within such district;
3. Members of a paid fire department, while acting as fireman under such a contract, are performing services in line of duty and are entitled to all benefits of the fire department relief association.

Sincerely yours,

JOHN W. BONNER
Attorney General