

## No. 509

**FIRE DEPARTMENT RELIEF ASSOCIATIONS—INCORPORATION—ARTICLES OF INCORPORATION, where filed—COUNTY CLERK—SECRETARY OF STATE—STATE AUDITOR**

Held: Fire department relief associations should be incorporated under the provisions of Chapter 42, Civil Code of Montana, 1935, and a certified copy of the Articles of Incorporation, filed with the County Clerk, should be filed with the Secretary of State.

November 17, 1942.

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

Dear Mr. Holmes:

You have requested my opinion as to the proper procedure in the formation of a fire department relief association. I am advised, from correspondence attached to your request, the pertinent question at issue is the proper statute under which such an association should incorporate.

Section 5129, Revised Codes of Montana, 1935, in part provides:

"The confirmed members of the fire department or departments, together with the volunteer fire department or departments recognized by the city or town council in each incorporated city or town of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of the city or town of..... (naming the city or town) and when so formed, it shall incorporate under the laws of this state."

It will be noted this section requires, first, the formation of an association composed of the confirmed members of the fire department and the members of a volunteer fire department or departments recognized by the city or town council of an incorporated city or town, and, second, when so formed, the incorporation of such association under the laws of the State of Montana. It is not provided under which specific provision of our statutes incorporation is to be had. Inasmuch as there are several provisions of our statutes under which incorporation may be had, it is necessary to determine the proper statute in this instance.

In each instance where the statute provides for incorporation, it specifically defines the objects and purposes required in order to incorporate under that specific statute. After studying these separate statutes, it would seem clear that—in view of the objects and purposes of fire department relief associations—incorporation thereof should be had under the provisions of Chapter 42 of the Civil Code of Montana, 1935, Volume 3.

The question has also been raised whether or not the articles of incorporation, when incorporation is had under the provisions of Chapter 42, must be filed with the secretary of state as well as with the county clerk.

Section 6455 of Chapter 42, supra, provides the articles of incorporation be filed with the county clerk, in case the association be local, and with the secretary of state if it be a "state, representative, supervisory, governing, or grand organization or body . . ." Fire department relief associations are clearly local and hence, under this statute, the articles must be filed with the county clerk. However, the records of the office of secretary of state disclose certified copies of such articles have been filed with his office over a period of more than twenty years. I am advised that during

this period, the state auditor has refused to pay to any such association its proportion of funds until articles have been filed with the secretary of state. This requirement is for the convenience of the auditor and the orderly and efficient dispatch of the funds. Ready access to the articles of incorporation enables the auditor to determine what associations have complied with the law in order to be entitled to the proportionate shares of the tax which makes up the benefit fund of the relief association.

Our Supreme Court has on a number of occasions held as follows:

“The contemporaneous and long-continued practice of officers required to execute or take special cognizance of a statute is strong evidence of its true meaning. And if the legislature by its inaction has long sanctioned a certain construction, language apparently unambiguous may be given by the courts such construction, especially if the usage has been public and authoritative. (*Hilburn v. St. Paul, M. & M. Ry. Co.*, 23 Mont. 229, 58 Pac. 551, 811.) The last-mentioned rule is applied where for many years the construction insisted upon has been the rule of action and to disturb it would be to work great public and private injury and inconvenience. (*Hilburn Case, supra.*)”

*Miller Insurance Agency v. Porter*, 93 Mont. 567, 320 Pac. (2nd) 643.

See also the following:

*Guillot v. State Highway Commission*, 102 Mont. 149, 56 Pac. (2nd) 1072;

*Murray Hospital v. Angrove*, 92 Mont. 101, 10 Pac. (2nd) 577.

It is therefore my opinion fire department relief associations should be incorporated under the provisions of Chapter 42, Volume 3, Civil Code of Montana, 1935, and a certified copy of the articles of incorporation, filed with the county clerk should be filed with the secretary of state.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General