

Section 5148 authorizes the county commissioners to establish fire districts in any unincorporated town or village, or any territory lying within ten miles of the limits of any incorporated city whenever requested in writing by owners of fifty percent or more of the area included within the proposed district. This section then specifically authorizes the levy of a tax in the following language:

“. . . and at the time of the annual levy of taxes (the commissioners) may levy a special tax upon all the property within such districts 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 . . .”

The statute specifically provides for what the money raised by the levy authorized shall be used, namely, for “buying apparatus and maintaining the fire department.” The answer to your question would therefore depend upon the meaning to be given the word “maintaining” as used in the statute.

Webster's International Dictionary defines the verb “maintain” as follows: “To bear the expense of; to support as to maintain a family; to hold or keep in any particular state or condition; to keep up, not to suffer to fail or decline.”

The legislature has provided the money raised by the levy is to be used to maintain the fire department. In the words of the definition, then, it is to keep up, or hold or keep in a particular state or condition. It is obvious that the only purpose for providing for the establishment of a fire district and of a fire department therein, is to protect the property of the taxpayer from destruction by fire. To accomplish this object it is necessary to provide an efficient department capable of and equipped for the carrying out of such object. If it is necessary, therefore, to have a night watchman to more efficiently provide the protection for which the establishment of the district and the department is authorized, certainly, the cost of providing such would come within the meaning of the term “maintaining” and would be a proper use of the tax money.

It has been held that the salary of a teacher is manifestly for the maintenance of schools, within the meaning of the word “maintenance” in a statute pro-

#### Opinion No. 224.

#### Fire Districts—Taxation—Levies— Special Levies—County Commissioners.

Held: The salary of a night watchman employed for the purpose of more efficient fire protection for the district, is a proper use of money raised from the tax levy authorized by Section 5148, Revised Codes of Montana, 1935.

July 8, 1944.

Mr. Lyman H. Bennett, Jr.  
County Attorney  
Madison County  
Virginia City, Montana

Dear Mr. Bennett:

You have requested the opinion of this office on the following question:

May the county commissioners permit the funds acquired by the special levy contemplated by Section 5148, Revised Codes of Montana, 1935, to be used in part for the purpose of compensating a night watchman to be employed for the purpose of fire protection in the Ennis community?

You have advised that a fire district has been established in Ennis, Montana, an unincorporated town, pursuant to Section 5148, supra.

viding a budget for schools. (See Evans v. F. L. Dumas Store, Inc., 92 Ark. 571, 93 S. W. (2nd) 307.)

It is therefore my opinion that the salary of a night watchman employed for the purpose of more efficient fire protection for the district, is a proper use of money raised from the tax levy authorized by Section 5148, Revised Codes of Montana, 1935.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General