

amended by Chapter 43, Laws of 1939, for the purpose of the relief association.

March 30, 1943.

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

Dear Mr. Holmes:

You have requested my opinion relative to the operation of Section 5119, Revised Codes of Montana, 1935, as amended by Chapter 43, Laws of 1939.

Section 5119, as amended, provides in substance for maintaining a balance in the fireman's disability and insurance fund of an amount equal to one per cent of the taxable valuation of the city, town or municipality where the relief association is located. It further provides that, in the event the balance in the said fund shall contain an amount less than one per cent of the taxable valuation of taxable property within the city, town or municipality, the proper authority shall annually levy a special tax of not to exceed one mill on the dollar of the taxable valuation of all taxable property of the locality.

The balance in the fire department relief association fund in question is, at the present time, in an amount of \$10,000. The taxable valuation of the city in which the relief association is located is \$590,000. You inquire whether or not the proper authority should make a tax levy of one mill, as provided by Section 5119, as amended, for the purpose set forth in the act.

Under the facts given, it appears the proper authority would not be justified in making a tax levy of one mill for the purpose of maintaining a balance in the relief association fund. A levy of one mill on the dollar may be made under the act where the balance in the fund is in an amount less than one per cent of the taxable valuation of all the taxable property within the city, town or municipality. The facts show the taxable valuation to be \$590,000. They also show the balance in the fund is now \$10,000. As the balance at the present time is a greater amount than one per cent of the taxable valuation of all taxable property, it is my opinion no levy may be made by the proper authority for the purpose of the relief association fund, as the only time a

Opinion No. 28.

**Fire Department Relief Association—
Disability Fund—Taxation.**

Held: Where the balance in a fire department relief association fund is not in an amount of less than one per cent of the taxable valuation of the taxable property in a city, town or municipality, no tax levy may be made by the proper authority under the provisions of Section 5119, Revised Codes of Montana, 1935, as

levy may be made is when the fund is less than an amount equal to one per centum of the taxable valuation of all of the taxable property within the limits of the municipality.

Sincerely yours,
R. V. BOTTOMLY
Attorney General