

al company for each one thousand inhabitants, no company to contain more than twenty-eight certificate members. Each certificate number is entitled to the benefits of exemptions provided by Section 5144, Revised Codes of Montana, 1935, and of the Volunteer Firemen's Compensation Act, Sections 5158.1 to 5158.12, inclusive, Revised Codes of Montana, 1935.

July 30, 1943.

Mr. Frank J. Roe  
County Attorney  
Silver Bow County  
Butte, Montana

Dear Mr. Roe:

You have submitted for consideration of this office your opinion rendered to the Race Track Fire Department, Silver Bow County, Montana. The question considered in your opinion is whether a regularly organized fire district may have more than one fire company each composed of twenty-eight members, using the same fire equipment and apparatus, and all members coming under the Volunteer Firemen's Compensation Act. This district now has one company composed of twenty-eight active members and twelve reserve members. It is the desire to organize another company of twenty-eight active members, use the fire equipment and apparatus in common and subject all active members to the benefits of the compensation act.

After a full consideration of the facts and the law applicable thereto, I must agree with your opinion.

Chapter 392 of the Political Code of Montana, 1935, deals with the subject of fire protection in unincorporated towns and areas within ten miles of an incorporated city. It provides for the creation of fire districts by the board of county commissioners (Section 5143) and the levy of a special tax for the purpose of buying apparatus and maintaining the fire department (Section 5148). Section 5143 specifically provides:

" . . . There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town or village where the population is

**Opinion No. 98.**

**Volunteer Firemen—Fire Districts,  
Number of companies for each district—  
County Commissioners, as board of  
directors of fire districts, powers and  
duties.**

Held: Each regularly created fire district must have one fire company containing not more than twenty-eight certificate members, and may have an addition-

less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members."

As pointed out in your opinion, it is clear the legislature intended a fire district regularly organized must be allowed at least one company regardless of population, and not more than one company for each one thousand population. Each company may contain not more than twenty-eight certificate members. The district here in question has a population of two thousand. It is clear, therefore, this district may be allowed two companies, each composed of twenty-eight certificate members.

Section 5148 authorizes the board of county commissioners to levy a special tax upon all property within the district "for the purpose of buying apparatus and maintaining the fire department of any such district." While the statute uses the terms "company" and "department" I agree with your conclusion it is clear—from a reading of the several sections of Chapter 392—it was contemplated a regularly organized fire district may be allowed a fire department to take care of the fire protection of such district and such department may consist of one or more companies, the basis being one company for each one thousand inhabitants, and each company to be composed of not more than twenty-eight certificate members who are entitled to the benefits of the exemptions provided by Section 5144, and of the Volunteer Firemen's Compensation Act, Sections 5158.1 to 5158.12, inclusive, Revised Codes of Montana, 1935. The taxes authorized to be levied shall be used for the purchase of apparatus and equipment and maintaining the fire department. Such apparatus and equipment is to be used in common by the companies comprising the department.

Each company must be separately organized in accordance with the provisions of Sections 5143 and 5144, Revised Codes of Montana, 1935.

While the statute is not clear on the subject, I agree with your conclusion there should be but one fire chief whose duties are set forth in Section 5147. As to the selection of such fire chief, I am of the opinion the by-laws of the companies could provide for this.

As pointed out by you, Section 5149, Revised Codes of Montana, 1935, des-

ignates the board of county commissioners the ex-officio board of directors of fire districts organized within the county, and as such board it has general supervision and management of the district and the companies organized therein. I therefore approve your suggestion that the necessity for the increase in number of companies, and the membership of each, be certified to the board of county commissioners and—if approved—the companies be organized in accordance with Sections 5143 and 5144, supra, and the by-laws provide for the selection of a chief of the department and the use of the fire equipment and apparatus commonly by both companies.

It is therefore my opinion a regularly organized fire district must have one fire company containing not more than twenty-eight certificate members; one company may be allowed for each one thousand inhabitants, and in districts having more than one company, there may be selected a common chief and the apparatus and equipment of the district may be used in common by all companies. All certificate members of regularly organized companies are entitled to the benefits of exemptions provided in Section 5144, Revised Codes of Montana, 1935, and of the Volunteer Firemen's Compensation Act, Sections 5158.1 to 5158.12, inclusive, Revised Codes of Montana, 1935.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General