

write fire coverage on automobile as incidental to its general casualty coverage.

February 14, 1946.

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

Dear Mr. Holmes:

You have requested my opinion whether you have the authority to collect the tax provided under Section 6112, Revised Codes of Montana, 1935, on premiums received by casualty companies from that portion of policies written by such companies covering fire risks on automobiles, and distribute such tax to fire department relief associations as directed in Section 5127, Revised Codes of Montana, 1935.

Section 6112, Revised Codes of Montana, 1935, provides in part as follows:

"All insurance corporations, associations and societies, as hereinbefore specified in the preceding section, before commencing business in the state of Montana, shall be required to secure a license authorizing them to transact business of insurance corporations, associations, or societies, and shall pay to the state auditor, for such license, the following fees . . ."

The statute then provides the amount of the license fee depending upon the amount of annual premiums collected.

Section 5127, Revised Codes of Montana, 1935, provides:

"At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town and entitled by law to receive the same, his warrant for an amount equal to the license fee collected by the state auditor as ex-officio insurance commissioner, from fire insurance companies, as provided by section 6112, as said cities, or towns are each severally entitled to, computed as follows: . . ."

Section 1 of the statute, then provides that each city and town shall re-

Opinion No. 122.

Insurance—Fire Insurance—Casualty Insurance—Fire Department Relief Associations—License Tax, Distribution Thereof.

Held: 1. All insurance companies are liable for the payment of the license tax provided by Section 6112, Revised Codes of Montana, 1935.

2. A casualty company, authorized to write the fire coverage on an automobile as incidental to its casualty coverage is liable for the license tax provided under Section 6112, Revised Codes of Montana, 1935.

3. The state auditor, under the provisions of Section 5127, Revised Codes of Montana, 1935, has authority to and it is his duty to collect and distribute the license tax provided by Section 6112, Revised Codes of Montana, 1935, from all insurance companies, including a casualty company authorized to

ceive as its portion of the total license fees collected "all the license fees assessed and collected on all premiums collected by fire insurance companies in the said city or town, pursuant to section 6112."

It will be noted that Section 5127, supra, is a part of the law dealing with fire department relief associations, which authorize the establishment of fire department relief associations for the benefit of the members of the fire department. These statutes authorize the establishment of a fund out of which certain benefits are paid to members who become sick or disabled in line of duty and for a retirement pension. The legislature has determined this fund should be maintained by the tax levied and collected under the provisions of Section 6112, that is, from a tax levied on the amount of premiums collected from fire insurance policies written on property within the respective cities and towns having a fire department relief association.

It is clear from a reading of the statutes dealing with the fire department relief associations in conjunction with Section 6112 it was the intention of the legislature the cost of benefits paid to members of the fire department relief associations of the several cities and towns for sickness and disability incurred in line of duty, and for retirement benefits and benefits to widows and children of deceased members of such department should, in part at least, be paid from the tax levied and collected under Section 6112 from premiums received from fire insurance written on risks within the several cities and towns.

This office, in Opinion No. 306 of Volume 19, Report and Official Opinions of the Attorney General, held a casualty company is authorized under the statutes to write the fire coverage on an automobile as incidental to the casualty coverage. The question then arises whether a casualty company is liable for the payment of the tax provided by Section 6112 on that portion of the premium collected under a policy issued by it which insures an automobile for fire risk, in view of the wording of Section 5127, quoted above. The answer to this question depends upon the construction of the statutes applicable to the subject.

The policy of the law is persuasive in determining the meaning of statutory

provisions. (State v. Sedgwick, 46 Mont. 187, 127 Pac. 94.) And in the construction of a statute or statutes, the intention of the legislature is to be sought in the language employed and apparent purpose to be subserved. (State v. Kall, 53 Mont. 162, 162 Pac. 385.) It is very apparent from a consideration of the statutes involved here the policy of the law and the intention of the legislature was to provide, in part at least, the money for the firemen's disability and pension fund, from the license tax levied on the proceeds of premiums collected from fire insurance policies. In enacting Section 5127, the legislature had in mind Section 6112. Therefore, both statutes must be construed together so as to give effect to the legislative intent. It will be noted Section 6112 requires "all insurance corporations . . ." to pay the tax, while under Section 5127 it is provided that only that portion of the license fee collected from "fire insurance companies" is to be distributed to the relief associations. It is an established rule of construction such meaning is to be given to language of lawmakers as will effectuate the object and purpose of the law. (Great Northern Utilities Co. v. Public Service Commission, 88 Mont. 180, 293 Pac. 294.) And the words of a statute may be modified to compel conformity to the manifest intent of the legislature. (State v. District Court, 83 Mont. 400, 272 Pac. 575.)

If, therefore, we are to give to these statutes such meaning as will effectuate the object and purpose of the law with respect to the subject in hand, we are compelled to construe the statutes to mean all license taxes collected under the provisions of Section 6112 on premiums received from policies written to cover fire risks must be distributed as provided under the provisions of Section 5127, regardless of whether such premiums were collected by a fire insurance company or any other insurance company which may legally write fire coverage.

It is therefore my opinion you have the authority and it is your duty to collect the license tax provided under Section 6112 from all insurance companies and to distribute that portion of such license tax collected on premiums received from policies covering fire risks, regardless of whether such policies were written by a fire insur-

ance company or by any other insurance company legally authorized to write fire insurance. It therefore follows a casualty company which may legally write the fire coverage on automobiles as an incident to the general casualty coverage must pay the license tax provided by Section 6112, and the auditor must distribute that portion of the license tax collected on the premium received by such casualty company from the fire coverage as directed by Section 5127.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General