

VOLUME 31

Opinion No. 25

**CITIES AND TOWNS; Departments; Fire; Volunteer, tax levy for—
CITIES AND TOWNS; Taxation; Volunteer fire department levy—
Section 11-1909, R.C.M. 1947.**

HELD: Cities and towns may use general fund moneys in addition to those realized from the levy authorized by Section 11-1909, R.C.M. 1947, to operate a volunteer fire department.

December 8, 1966

Mr. Albert Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion with regard to the following question:

Can a city or town use funds other than those raised by the two mill levy authorized by section 11-1909, R.C.M. 1947, for the purpose of operating a volunteer fire department?

Section 11-1909, R.C.M. 1947, was enacted in 1927 and provides as follows:

For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department, and for the purpose of purchasing the necessary equipment therefor, the council in any city or town, may assess and levy, in addition to other levies permitted by law, a special tax not exceeding two (2) mills on each dollar of the assessed valuation of the taxable property of the city or town; and, provided, further, that the words "assessed valuation" as used in this section shall be the percentage of the true and full valuation of the taxable property provided in section 84-302 and shall not be deemed to be the true and full valuation of such property.

Prior to the enactment of this above quoted section the statutes did not specifically authorize a tax levy for the support of volunteer fire departments. Such departments were supported as are paid fire departments now, out of taxes collected under authority of what is now section 84-4701, R.C.M. 1947. This section grants to cities and towns the power to levy taxes for general or administrative purposes. It states in part:

The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities and towns must not exceed two (2%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council or commission in each city or town may distribute the money collected into such funds as are prescribed by ordinance; * * *

The furnishing of fire protection has historically been held to be a general municipal purpose, for which taxes can be levied. See *City of Jacksonville et al v. Savannah Machine & Foundry Co.*, 47 So. 2d 634; *Ward v. Lester*, 31 S.W. 2d 924, 16 McQuillan, *Municipal Corporations*, §44.36. Thus there seems to be no question that the support of volunteer fire departments is a "general municipal or administrative purpose" within the terms of the statute above cited.

The question then becomes whether the legislature, by enacting section 11-1909, R.C.M. 1947, intended not only to provide a source of revenue for the support of volunteer fire departments but also to set a limit on the funds that a city or town could appropriate to support such a fire department. It is my opinion that the legislature did not intend the latter.

One of the basic rules of statutory construction is found in section 93-401-15, R.C.M. 1947. This section states:

In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Had the legislature intended section 11-1909, R.C.M. 1947, to be the sole source of funds for the support of volunteer fire departments they could have explicitly so provided. However, they did not, and I cannot insert that which has been omitted. It should also be noted that neither cities and towns which have paid fire departments nor unincorporated towns which are within a fire district have a special statutory limitation on the funds that can be spent for fire protection.

Therefore it is my opinion that the purpose of section 11-1909, R.C.M. 1947, is to provide an additional source of revenue for the support of volunteer fire departments and not to impose any special limitation upon the funds that may be so spent.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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