

## VOLUME NO. 36

## Opinion No. 73

**FIRE DISTRICTS — Credit purchases, budgets, warrants; Support and maintenance of, levy for, limitation on; BUDGETS — Fire Districts, rural; Sections 11-2010 and 16-1803, Revised Codes of Montana 1947.**

**HELD: 1. The trustees of a fire district incorporated under Chapter 20 of Title 11, R.C.M. 1947, have the authority and power to submit a proposed budget for capital outlay to the county under Chapter 19 of Title 16.**

**2. It is advisable that the trustees of such a fire district solicit bids by advertising for the purchase of equipment.**

April 21, 1976

Mr. Ronald W. Smith  
Hill County Attorney  
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following questions:

1. Do the trustees of a fire district established under Chapter 20 of Title 11, R.C.M. 1947, have the power to submit a proposed budget to the Board of County Commissioners for capital outlay?
2. Are the trustees of such a fire district bound by the three-year contract and call-for-bid requirements of section 16-1803, R.C.M. 1947?

Chapter 20 of Title 11, R.C.M. 1947, authorizes the Board of County Commissioners to establish fire districts in any unincorporated territory, town or village. Section 11-2010(a) authorizes the Board of County Commissioners to appoint a five-member board of trustees to govern and manage the affairs of the fire district. Section 11-2010(b) authorizes the trustees to organize and prepare annual budgets and request special levies for those annual budgets. That subsection further provides that "[t]he budget laws relating to county budgets, shall, as far as applicable, apply to fire districts."

I have concluded that the above-quoted language, along with the authorization to prepare an annual budget and "request special levies therefor," authorizes the board of trustees of a fire district to submit a budget under Chapter 19 of Title 16, R.C.M. 1947. Specifically included within the estimate of expenditures which each county official is to submit under Chapter 19 is an estimate of expenditures for "capital outlay". Section 16-1902(2)(c). I have therefore concluded that the trustees of a fire district established under Chapter 20 of Title 11 may submit a proposed budget for capital outlay to the county pursuant to Chapter 19 of Title 16.

In your letter, you refer my attention to Vol. 18, **Opinions of the Attorney General**, No. 118, in which Attorney General Freebourn held that a fire district established in an unincorporated town was limited to a tax levy of two mills per dollar of assessed valuation of property in the district. That opinion was based on Chapter 26, Laws of 1927, which is now codified as Chapter 19, Title 11. The

particular section upon which Attorney General Freebourn based his opinion is presently section 11-1909. That section 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 assessed valuation of taxable property of the city or town....

Although the language of section 11-1909 clearly limits that section's applicability to incorporated cities or towns, Attorney General Freebourn nevertheless chose to apply the two mill limitation to fire districts in unincorporated towns, probably because the unincorporated fire district law "makes provision for the levy of taxes for the purpose of buying apparatus and maintaining the fire department in such district but makes no limit as to the amount of levy." 18 **Opinions of the Attorney General**, p. 136.

However, in section 2, Chapter 75, Laws of 1953, the legislature provided that the budget laws of the county are applicable to fire districts in unincorporated areas. This had the effect of taking the Chapter 20 fire districts out of the realm of city finance law, changing the law upon which Attorney General Freebourn's opinion was based, and rendering that opinion obsolete.

With regard to your second question, you have concluded that a fire district incorporated under Chapter 20 of Title 11 is bound by the three-year contract and call-for-bid requirements of section 16-1803. However, in 26 **Opinions of the Attorney General**, No. 84, Attorney General Olson considered this question and reached an opposite conclusion. At page 137, he stated:

Boards of county commissioners in purchasing automobiles must observe the restrictions of section 16-1803, R.C.M. 1947, which limits installment contracts to a period of three years and also requires solicitation of bids by newspaper advertisements. This code section is not a part of the budget act and does not apply to fire districts. However, it does establish a guide for a good procedure to follow by the trustees of fire districts.

The reasoning of Attorney General Olson's opinion appears to be sound, and I see no reason to modify or overrule it at the present time.

**THEREFORE, IT IS MY OPINION:**

1. The trustees of a fire district incorporated under Chapter 20 of Title 11, R.C.M. 1947, have the authority and power to submit a proposed budget for capital outlay to the county under Chapter 19 of Title 16.
2. It is advisable that the trustees of such a fire district solicit bids by advertising for the purchase of equipment.

Very truly yours,  
ROBERT L. WOODAHL  
Attorney General