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**MONTANA CODE ANNOTATED PERTAINING TO FIRE DEPARTMENT  
STAFFING**

**EXECUTIVE DEVELOPMENT**

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**An applied research project submitted to the National Fire Academy as part of the  
Executive Fire Officer Program.**

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## ABSTRACT

The problem is that the State of Montana has ambiguous laws concerning fire department paid staffing based upon community population. The purpose of this applied research project is to describe how restrictive, unique and misunderstood the State of Montana's laws concerning community fire departments have become. This applied research project has used the descriptive method in order to cover the material presented. Three research questions were used in this applied research project; they are:

1. What are the laws regarding municipal and paid fire department staffing for communities in Montana?
2. What other states have laws that require a paid fire department in relation to community population?
3. What do elected officials in Montana State government know about laws pertaining to fire department staffing and the impact of these laws?

The procedures to address the three questions included a review of Montana Codes Annotated (MCA) 7-1-4111, 7-1-4112, 7-33-4101, 7-33-4109 and 7-33-4128. To gain a perspective into the background of Montana State statutes, informal interviews were conducted with the following people: State Law Librarian, Ms. Judith Meadows of the State Law Library in Helena, Montana, Mr. Roy Burdette, a former lobbyist with the Montana Professional Fire Fighters Association, Chief Bret Waters of Belgrade, Montana and Chief Paul Laisy of Missoula Rural Fire District in Missoula, Montana.

Every state's fire marshal or fire commissioner was interviewed by the author to address the second research question. One member of the Montana State Senate, two members of the State House of Representatives, the Governor of Montana

and the President of the Montana Professional Fire Fighters Association were interviewed in an attempt to address the third research question. Comparison was also performed using data from the National Fire Protection Association and interviews of fire department staffing in each Montana community that exceeded 10,000 population.

Results of the applied research project identified three Montana State statutes that provide the basis of this paper, MCA 7-33-4101, 4109 and 4128. It was determined by interviewing the fire marshal or fire commissioner of every state that Montana is the only state to require a paid fire department in conjunction with the population of a community.

It was determined that a portion of state elected officials in Montana were unaware, cognizant, or misinformed depending on who was asked about MCA 7-33-4109 and 4128 and their impact on local government.

The summary of recommendations was to evaluate Montana's current laws regarding fire departments in communities, to evaluate the necessity of Montana's laws in comparison to laws found in other states, and to educate those involved in public service about the laws they are required to enforce. The final recommendation was to study other systems and take the best from each to help insure that Montana's fire service is the best for its citizens.

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## **INTRODUCTION**

There are many organizational forms of fire departments in the United States. Fire departments can be public, private, full-time, volunteer or a combination of several forms of staffing. The problem is that the State of Montana has ambiguous laws concerning fire department paid staffing based upon community population. The purpose of this applied research project is to describe how restrictive, unique and misunderstood the State of Montana's laws concerning community fire departments have become. The descriptive method of research will be used to address the following questions:

1. What are the laws regarding municipal and paid fire department staffing for communities in Montana?
2. What other states have laws that require a paid fire department in relation to community population?
3. What do elected officials in Montana State government know about laws pertaining to fire department staffing and the impact of these laws?

## **BACKGROUND AND SIGNIFICANCE**

The problem is that the State of Montana has ambiguous laws concerning fire department paid staffing based upon community population. Montana State laws on the organization and staffing of fire departments for cities of the first and second class are either unknown, or interpreted differently depending on who is asked. State legislators interviewed for this research project were unaware of the impact of two of the three specific laws cited for this research project, these laws are MCA 7-33-4109 and 4128, concerning paid staffing of fire departments for cities of the first and second class. The Governor of Montana does not agree that there are laws that require a paid department in

communities of the first and second class. However, Mr. Pat Clinch, President of the Montana Professional Fire Fighters Association readily acknowledges that there are laws that require a paid fire department in cities of the first and second class.

In the past the law that each city or town have its own fire department has prevented the consolidation of a fire district that was contiguous with a municipal fire department.

“A municipal fire department may not be merged with a rural fire district into a single fire protection agency;” (Montana Attorney General’s opinion, Volume number 43, Opinion number 56).

The present impact of fire department statutes strictly controls the organizational development of fire departments and prohibits the exploration of more cost effective methods of fire service delivery such as consolidation. The current laws prohibit the Livingston Montana Fire Department from developing into a county fire department because the Livingston Fire Department cannot consolidate with the Park County Rural Fire Department based upon the previous opinion of the Attorney General. The Livingston Fire Department provides emergency medical services for Park County which has a service area of 2,620 square miles. The Livingston Fire Department may not build and staff stations outside of the three and one half square mile city limits of the City of Livingston

The probable future impact of these laws left in their present form is a higher cost for fire services with decreased efficiency due to redundant services in a service area. The definitive linkage of this research and the National Fire Academy Executive Development course is found in three areas. The first area is legal issues because this

research project deals with Montana State statutes. Labor relations is the next link because paid union firefighters monitor laws that require paid firefighters in Montana. Finally, organizational culture because volunteer firefighters are not allowed in communities where the population exceeds 10,000.

### LITERATURE REVIEW

The literature review began with a review of the relevant Montana Statutes regarding fire departments. MCA 7-33-4101 was enacted in 1899 in its original form.

Fire department authorized and required. In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part. (MCA 7-33-4101, 1999 Edition).

The next component of the literature review covered Montana Code Annotated and the implications of paid fire fighter staffing in cities of the first and second class.

“ In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.” (MCA 7-33-4109, 1999 Edition).

Once a community reaches a population of 10,000 it becomes a city of the first class. Any provisions for volunteer staffing are eliminated in cities of the first class because it is not addressed in Montana Codes. There is another law in MCA that implies the requirement for paid firefighters in cities of the first class.

Minimum wages of firefighters in cities of the first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least \$750 per month for the first year of service and thereafter at least \$750 per month plus 1% of said minimum base monthly salary for each additional year of service. (MCA 4-33-4128, 1999 Edition).

To address the findings of others, the afternoon of December 29, 1999 was spent at the State Law Library in Helena, Montana with State Law Librarian Judith Meadows. This was done to insure that there was a complete historical review of MCA 7-33-4101, 4109 and 4128. It was found that records were not kept of hearings or work sessions regarding the formation of MCA 7-33-4101, 4109 or 4128.

A review was conducted of pertinent previous opinions by the Attorney General of the State of Montana; only one was found, it is cited in this research paper in the following paragraph. The Attorney General at that time was Marc Racicot, the current Governor of Montana.

7-33-4101, MCA. State law further specifies that the chief of the fire department shall have sole command of the department, shall possess full authority to discipline firefighters, and shall be responsible for the engines and these provisions, 'it is clear... that every city must have a municipal fire department.' (Montana Attorney General's opinion, Volume number 43, Opinion number 56).

Once it was determined that paid fire department staffing was based upon community population a review of MCA 7-1-4111 was performed to determine the classification of municipalities.

- (1) Every city having a population of 10,000 or more is a city of the first class.
- (2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.
- (3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.
- (4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town. (MCA 4-1-4111, 1999 Edition).

Cities of the second class may take exception to the previous classification system by enacting a resolution under the provisions of MCA 7-1-4112, "Exceptions from classification system, Notwithstanding the provisions of 7-1-4111: (1) every municipal corporation having a population of more than 5,000 and less than 7,500." (MCA 4-1-4112, 1999 Edition).

A review was initiated to define the requirements of fire departments in Montana and the review started with MCA 7-33-4101.

Fire department authorized and required. In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part. (MCA 4-33-4101, 1999 Edition).

The next portion of the literature review to determine if other states have laws that require a paid fire department in relation to community population was initiated at the National Emergency Training Center (NETC) Learning Resource Center (LRC) at Emmitsburg, Maryland on December 14, 1999. A current list of each state's fire marshal or fire commission was obtained from the LRC and in January, 2000 each agency was personally called by the author and asked the following question.

Does your state or district have any laws that require firefighters to be paid when a community reaches a certain population?

The following is the list of state fire marshals contacted during the first week of January, 2000 with their corresponding telephone numbers.

Alabama-John Robison	(334) 241-4166
Alaska-Craig Goodrich	(907) 269-5491
Arizona-Duane Pell	(602) 255-4964
Arkansas-Ray Carnahan	(501) 618-8624
California-Ron Coleman	(916) 653-7097
Colorado-Paul Cooke	(303) 239-4463
Connecticut-Position vacant	(860) 685-8380
Delaware-Daniel Kiley	(302) 739-5665
District of Columbia-Alexander Bullock	(202) 727-3659
Florida-Charles Clark	(850) 922-3170
Georgia-LC Cole	(404) 656 2064
Hawaii-Attilio Leonardi	(808) 831-7771
Idaho-Don McCoy	(208) 334-4370

Illinois-Thomas Armstead	(217) 785-0969
Indiana-M Tracy Boatwright	(317) 232-2226
Iowa-Roy Marshall	(515) 281-5821
Kansas-Gale Haag	(913) 296-3401
Kentucky-Dave Manley	(502) 564-3473
Louisiana-V J Bella	(225) 925-4911
Maine-John Dean	(207) 624-8964
Maryland-Rocco Gabriele	(410) 339-4200
Massachusetts-Stephen Coan	(978) 567-3110
Michigan-Wade Schaefer	(517) 322-1750
Minnesota-Thomas Brace	(651) 215-0500
Mississippi-Millard Mackey	(601) 359-1061
Missouri-Bill Farr	(573) 751-2930
Montana-Terry Phillips	(406) 444-2050
Nebraska-Michael Durst	(402) 471-2027
Nevada-Martin Carr	(775) 687-4290
New Hampshire-Donald Bliss	(603) 271-3294
New Jersey-William Cane	(609) 633-6106
New Mexico-George Chavez	(505) 827-3721
New York-James Burns	(518) 473-3590
North Carolina-Jim Long	(919) 733-7349
North Dakota-Position Vacant	(701) 328-5555
Ohio-James McNamee	(614) 752-8200

Oklahoma-Tom Wilson	(405) 297-3584
Oregon-Robert Panuccio	(503) 378-3473
Pennsylvania-James Carey	(717) 783-5529
Rhode Island-Irving Owens	(401) 294-0861
South Carolina-Lewis Lee	(803) 896-9800
South Dakota-Dan Carlson	(605) 773-3562
Tennessee-W Stuart Crine	(615) 741-2981
Texas-T R Thompson	(512) 239-4911
Utah-Gary Wise	(801) 284-6350
Vermont-Robert Howe	(802) 828-2106
Virginia-Charles Altizer	(804) 371-7153
Washington-Mary Corso	(360) 352-0161
West Virginia-Walter Smittle III	(304) 558-2191
Wisconsin-William Boswell	(608) 267-9478
Wyoming-Jim Noel	(307) 777-7288

No other state had laws that required a paid fire department based upon community population. R. Schmidt (personal communications, January, 2000).

In January, 2000 Montana State Senator Lorents Grosfield, Montana State Representative Bob Raney, Montana State Representative Shiell Anderson and Mr. Pat Clinch, President of the Montana Association of Professional Firefighters, International Association of Fire Fighters (IAFF), were interviewed by telephone.

Montana Governor Racicot, who requested the questions in writing, also provided his answers in writing. The previous individuals were asked the following questions.

1. How long have you been in public service in the State of Montana and in what positions have you served?
2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?
3. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?
4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?
5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

A review was performed of the National Fire Protection Association (NFPA) report, *U.S. Fire Department Profile Through 1998*, (Karter, 1999) (see Appendix).

The report details the percentages of department types by population protected and this information was used in the final paragraph in the discussion portion of this paper.

Finally, each fire department of a city of the first class, a population of 10,000 or more, was contacted on February 28, 2000 by the author. Each of the following Montana fire departments were asked if their department had any volunteer personnel. All of the Montana cities of the first class were contacted: Billings, Bozeman, Butte, Great Falls,

Havre, Helena, Kallispell and Missoula. R. Schmidt (personal communication, February 28, 2000).

## PROCEDURES

The research procedure used in preparing this descriptive research project began with a literature review of Title 7, Chapter 33, Part 41-Municipal Fire Departments sections 4101, 4109 and 4128. The literature review focused on the implementation and application of the three previous laws. An interview was conducted with Ms. Judith Meadows who is the State Law Librarian at the Montana State Law Library in Helena, Montana on December 29, 1999 in an effort to gain a historical perspective. It was found from this interview that records of proceedings were either not kept or never recorded for section MCA 7-33-4101, 4109 and 4128. This information was corroborated in an interview with Mr. Roy Burdette on February 25, 2000 at his home. Mr. Burdette was a lobbyist for the Montana State Professional Fire Fighters Association from 1955 to 1970, Mr. Burdette is eighty years old.

Mr. Burdette stated that he didn't know why the laws were written, but he could speculate. Mr. Burdette said, "Any body who knew anything about why they were started is dead." R. Schmidt (personal communication, February 25, 2000).

Another portion of the procedure's process occurred during an informal interview on September 12<sup>th</sup>, 1999 at the Montana Fire Chiefs conference in Great Falls, Montana. Informal interviews were conducted with Chief Brett Waters of Belgrade, Montana and Chief Paul Laisy of Missoula Rural Fire District. Both Chief Waters and Chief Laisy

were asked if they knew how these laws had come into being. Both individuals were unsure of the origin of the three statutes in question, MCA 7-33-4101, 4109, 4128.

The procedure for the second research question was developed by trying to determine if other states have laws that require a paid fire department in relation to community population? The author contacted the Learning Resource Center (LRC) at National Emergency Training Center (NETC) on December 14<sup>th</sup>, 1999 and asked for list of current fire marshals in the United States. The list of fire marshals and fire commissioners was provided by the LRC and during the first week of January, 2000 each state's fire marshal was contacted by telephone and asked the following question. Does your state or district have any laws that require firefighters to be paid when a community reaches a certain population? R. Schmidt (personal communication, January, 2000).

The procedure for the third research question was an attempt to determine if a state senator and state representatives in the author's district were aware of the unique laws that require a paid fire department in the State of Montana. The Governor of Montana was interviewed as well as the State President of the IAFF. The author developed the questions that follow.

1. How long have you been in public service in the State of Montana and in what positions have you served?
2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?
3. Are you aware that Montana has laws that require a paid fire department in

communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?

4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?
5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

The procedure for selecting the state senator and state representatives was based upon their proximity and availability to the author. Mr. Pat Clinch was selected due to his elected position as President of the Montana Professional Fire Fighters Association. The governor was selected because he is the Governor of the State of Montana and is a former attorney general. The survey of elected officials is anecdotal. The elected officials were interviewed by telephone at their homes with the exception of the Governor who requested the questions in writing and responded in the same format in his letter dated February 17, 2000. State Senator Lorents Grosfield, District 13, was interviewed February 8, 2000. State Representative Bob Raney, District 26, was interviewed February 15, 2000. State Representative, Shiell Anderson, District 25, was interviewed February 8, 2000. Pat Clinch, President of Montana's Professional Fire Fighters Association, International Association of Fire Fighters was interviewed February 17, 2000. The Governor of Montana, Marc Racicot, requested the interview questions in writing and he responded in writing to the questions in his letter dated February 17, 2000.

A comparison of fire departments that serve a population of 10,000 to 24,999 was performed using the *National Fire Protection Association's U.S. Fire Department Profile*

*Through 1998*, Karter (1999), (see Appendix). The comparison was between fire departments nationwide versus fire departments in Montana for the previous population. Finally, each fire department in Montana that serves a population of 10,000, a city of the first class, was contacted by telephone on the morning of February 28, 2000 and asked if they had any volunteer fire fighters. R. Schmidt (personal communication, February 28, 2000)

### LIMITATIONS

The research was limited to several factors, not the least of these factors was that no one living knows why the statutes MCA 7-33-4101, 4109 and 4128 were written. Another limitation is the fact that there has never been a challenge of the three previous laws by a community and so a specific attorney general's opinion to their validity does not exist. In Montana, a city attorney must initiate the attorney general opinion process for the application of a law in relationship to a community, in the matter of the three previous cited statutes this has never happened.

### DEFINITIONS

**Author.** The person who has written this applied research paper, Robert Schmidt.

**IAFF.** International Association of Fire Fighters.

**Legislator.** A person elected to either the state house of representatives or the state senate in the State of Montana.

**Montana Code Annotated.** The state laws of Montana.

**MCA.** Abbreviation for Montana Codes Annotated.

**Paid fire fighter.** A person who is employed full time, a minimum of forty hours a week, as a fire fighter with a community in the State of Montana.

**Reserve fire fighter.** A reserve firefighter is another name for a volunteer firefighter with the exception that a reserve fire fighter may be compensated for incident response and receive monthly compensation for training.

**Statute(s).** Specific law(s) of the State of Montana.

**Volunteer fire fighter.** A person who does not work a minimum of a forty hour work week in a fire department and a person who is not compensated as a member of a fire department in Montana.

## RESULTS

1. What are the laws regarding municipal and paid fire department staffing for communities in Montana? In the State of Montana every city or town must have a fire department.

Fire department authorized and required. In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part. (MCA 7-33-4101, 1999 Edition).

To better understand the laws regarding paid fire departments in Montana one must first understand the classification of communities by population. The laws regarding paid staffing for fire departments in Montana start with MCA 7-1-4111

Classification of municipalities.

- (1) Every city having a population of 10,000 or more is a city of the first class.
- (2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town. (MCA 4-1-4111, 1999 Edition).

Cities of the second class may take exception to the previous classification system by enacting a resolution under the provisions of MCA 7-1-4112, "Exceptions from classification system. Notwithstanding the provisions of 7-1-4111: (1) every municipal corporation having a population of more than 5,000 and less than 7,500." (MCA 7-1-4112, 1999 Edition).

Once a community reaches 7,500 it must become a city of the second class and the first requirement to staff the fire department with paid personnel now becomes a necessity.

This requirement is clearly mentioned on the opening sentence of MCA 7-3-4109. " (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department..." (MCA 7-3-4109, 1999 Edition).

Once a community reaches a population of 10,000 it becomes a city of the first class. Any provisions for volunteer staffing are eliminated in cities of the first class because volunteer fire fighters are not addressed as in MCA 7-33-4109. There is another law in MCA that implies the requirement for paid firefighters in cities of the first class.

Minimum wages of firefighters in cities of the first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state a

minimum wage for a daily service of 8 consecutive hours of work of at least \$750 per month for the first year of service and thereafter at least \$750 per month plus 1% of said minimum base monthly salary for each additional year of service.

(MCA 7-33-4128, 1999 Edition).

2. What other states have laws that require a paid fire department in relation to community population?

In January of 2000 each state fire marshal or state fire commissioner was contacted, the District of Columbia was also included in the survey.

No other state, including the District of Columbia, has laws that require paid firefighters when a community reaches a certain population. Montana is the only state that requires paid firefighters based upon community population.

3. What do elected officials in Montana State government know about laws pertaining to fire department staffing and the impact of these laws?

The following are the interviews with state elected officials.

**Interview of State Senator Lorents Grosfield:**

1. How long have you been in public service in the State of Montana and in what positions have you served?

“In the Senate since 1990-Chairman Natural Resources Committee, Chairman Judiciary Committee.”

2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?

“Well, generally speaking I am a proponent of local government control.”

3. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?

“I guess I would say no.”

4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?

“No.”

5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

“Well I guess I don't know why those laws were originally passed. Obviously there was some reason for them, but if what you say is true they should be reviewed.”

R. Schmidt (personal communication, Montana State Senator Lorents Grosfield, February 7, 2000).

**Interview of Montana State Representative Shiell Anderson:**

1. How long have you been in public service in the State of Montana and in what positions have you served?

“I've been a legislator for eight years, highways and transportation and taxation for the last seven years.”

2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?

“Probably better left to local government.”

3. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?

“I am now, I kind of suspected that is where this was going.”

4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?

“No volunteers allowed if the district is 10,000 people or more? I am aware now.”

5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

“Absolutely!”

R. Schmidt (personal communication, Montana State Representative, Shiell Anderson Grosfield, February 7, 2000).

#### **Interview of Montana State Representative Bob Raney:**

1. How long have you been in public service in the State of Montana and in what positions have you served?

“Fifteen years as a state representative, taxation, natural resources, and fish and game.”

2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?

“No, I believe in local control so each community should make that decision.”

3. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?

"No, I wasn't."

4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?

"No, I did not."

5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

"Yeah, I believe in local control I think the local community should be able to make that decision themselves based upon insurance rates and how effective they are in getting volunteers and how effective they are at getting the local community to approve of buildings and trucks and all of that so I see no reason to not bring it home, the same with schools." R. Schmidt (personal communication, Montana State Representative Bob Raney, February 15, 2000).

**Interview of President, Montana Professional Fire Fighters, Mr. Pat Clinch:**

1. How long have you been in public service in the State of Montana and in what positions have you served?

"A fire fighter in Montana since 1981, I've been a local union officer since 1985, elected to the advisory board for the state fireman's association in 1985 and in 1994

I was elected as president of the Montana State council of professional firefighters, IAFF."

2. Do you feel that state government should have laws that require communities to have paid fire departments in a community where the population is in excess of 7,500 or is that a decision better left to local government?

“I believe that is a decision that should be made by the state. To insure continuity of services throughout the state.”

3. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 (cities of the 2<sup>nd</sup> class) or more?

“Yes I am and I know that those laws have been on the books for quite a while.

Some of those actually came out of, ah ah a lot of the laws that pertain to title 7-33-41 were a result of the explosion in Butte that killed most of the Butte fire department I think it was House Bill 19 in 1899.”

4. Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 (cities of the 1<sup>st</sup> class) or more?

“Yes, I am.”

5. Based upon the issues raised in the previous questions do you think these laws should be examined and possibly changed?

“I think they should be examined, I think we need to look at expanding those to cover areas that are not only just for municipal fire departments but also fire districts, I think we are starting to see some of the fire districts in Montana that are larger and have more complex issues than some of the smaller communities. I think the requirement for paid fire departments should be extended on out.”

R. Schmidt (personal communication, Pat Clinch, President Montana State Professional Fire Fighters Association, IAFF, February 17, 2000).

**Interview of the Governor of the State of Montana, Marc Racicot.** The Governor requested the interview questions in written format and the Governor responded by writing his response.

1. How long have you been in public service in the State of Montana and in what positions have you served?

“1976-77—Deputy County Attorney-Missoula County

1977-89—Assistant Attorney General

1989-1993—Attorney General

1993-Present—Governor” (M. Racicot, interview, February 17, 2000).

2. Do you feel that state government should have laws that require communities to have their own paid fire department when the population is in excess of 7,500 or is that a decision better left to local government?

The action suggested in the above question is a matter for the legislature of the people to determine. As you probably know, the authority to create or change the law in Montana, as in most states, is vested in the legislature or in the people via the initiative/referendum process. If communities and/or citizens are interested in making a state law that requires paid fire departments in communities whose population is in excess of 7,500, they need to implement that policy through one of those two processes. In addition, because this pertains to an area of enforcement under the auspices of the State Fire Prevention and Investigation

Bureau, which is supervised by the Attorney General, a separately elected Official, you may wish to contact that office for assistance or support in seeking a change to existing Montana statutes. (M. Racicot, interview, February 17, 2000).

3. Am I aware that Montana has laws that require a paid fire department in communities with a population of 7,500 or more?

No, I am not aware of such requirements in the Montana Codes Annotated, the MCA. My review of the MCA found that MCA 7-1-4111, identifies municipalities by size as follows:

Class 1—every city having a population of 10,000 or more

Class 2—every city having a population of 5,000 but less than 10,000

Class 3—every city having a population of 1,000 but less than 5,000

Town—every municipal corporation having a population of less than 1,000

However, nowhere in the MCA did I find the requirements set forth in your question. As above, if you believe that the current statutes should be changed, you will need to follow the process outlined above. (M. Racicot, interview, February 17, 2000).

4. Am I aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 or more?

No, I am not aware of such a requirement. Our research shows only that in MCA 7-33-4121 city councils or city commissioners in the first and second class cities are authorized 'to establish and promulgate rules governing the governing the employment' of fire department personnel. Further, MCA 7-33-4127 authorizes that, when councils or commissioners do establish fire departments, the

compensation is fixed by ordinance. MCA 7-33-4101 authorizes and requires a fire department in every city and town. My research of the MCA did not indicate a requirement specified in your question that the fire department be comprised of paid full time officers as opposed to volunteers. I believe at one time this may have been the case, but research of the MCA back through the 1995 edition does not indicate that this requirement currently exists.

(M. Racicot, interview, February 17, 2000).

5. Do I think that Sections 7-33-4101, 4109, and 4128, MCA should be examined and possibly changed?

In 1997 the legislature reviewed and adopted changes to MCA 7-33-4101. I do not believe that it is necessary to implement further revision unless some compelling need for further revision can be demonstrated. MCA 7-33-4109 was last amended by the legislature in 1983. It may be a good idea for fire personnel to review and determine whether updating is needed to reflect more current fire safety needs. If the need exists, interested parties should contact their local legislators with any recommendations for revision. MCA 7-33-4128 was last revised in the legislature in 1947. Therefore, I believe it would be beneficial to conduct a review of this statute and, if deemed appropriate, to revise it to reflect current conditions. Again, interested parties should contact their local legislators regarding any proposed revisions. (M. Racicot, interview, February 17, 2000).

## DISCUSSION

The study of how the results compare to the findings of others is not applicable to the first research question. The laws regarding municipal and paid fire department staffing for communities in Montana may be ambiguous but they are written for everyone to see. The discussion of established state laws in Montana does not lend itself to comparison or the findings of others because the laws have not been contested. What is available for discussion is the interpretation given to two of the MCA 7-33-4109 and 4128.

Legislators asked about MCA 7-33-4109 and 4128 did not know that they existed and therefore they could not know their implications. The Governor of Montana stated in response to the question , Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 or more?

No, I am not aware of such requirements in the Montana Codes Annotated, the MCA. However, nowhere in the MCA did I find the requirements set forth in your question. As above, if you believe that the current statutes should be changed, you will need to follow the process outlined above. (M. Racicot, interview, February 17, 2000).

The Governor also stated in answering the following question,  
Are you aware that Montana has laws that require a completely paid fire department (no volunteers) in communities with a population of 10,000 or more?

No, I am not aware of such a requirement...My research of the MCA did not indicate a requirement specified in your question that the fire department be comprised of paid full time officers as opposed to volunteers. I believe at one

time this may have been the case, but research of the MCA back through the 1995 edition does not indicate that this requirement currently exists. (M. Racicot, interview, February 17, 2000).

However, MCA 7-33-4109, 1999 Edition reads:

“ In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department...”  
(MCA 7-33-4109, 1999 Edition).

And MCA 7-33-4128 reads:

Minimum wages of firefighters in cities of the first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least \$750 per month for the first year of service and thereafter at least \$750 per month plus 1% of said minimum base monthly salary for each additional year of service.

(MCA 7-33-4128, 1999 Edition).

The author finds it interesting that the Governor of Montana could not find and discern the meaning of the two previous quoted statutes. The meaning of MCA 7-33-4109 and 4128 has not changed from the 1995 edition of MCA to the 1999 edition.

Mr. Pat Clinch, the President of the Montana Professional Fire Fighters Association had no doubt of the meaning of MCA 7-33-4109 and 4128. Mr. Clinch quickly replied yes to both of the following questions. Are you aware that Montana has laws that require a paid fire department in communities with a population of 7,500 or more? Are you aware that

communities with a population of 10,000 or more?

The second part of the discussion deals with the author's interpretation of the results, this portion of the discussion is in three parts and follows the flow of the research questions. The author recognizes MCA 7-33-4101, 4109 and 4128, these are the laws and there is no question to this fact. The author finds it interesting that Montana is the only state to have laws that mandate a paid department when a population of a community reaches 7,500 or more. This is based upon the response to the question posed to each state's fire marshal or fire commissioner, does your state or district have any laws that require firefighters to be paid when a community reaches a certain population?"

Given the Governor's opinion about laws concerning the requirement of paid fire fighters in cities of the first and second class and the opinion of Pat Clinch, the President of the Montana Professional Fire Fighters Association, the author tends to agree with Mr. Clinch. At this time there are no volunteer fire fighters in any community in Montana that has a population in excess of 10,000. In the United States the percentage of all career fire departments that serve a population of 10,000 to 24,999 is 18.2%. *National Fire Protection Association, U.S. Fire Department Profile Through 1998*, Karter (1999), (see Appendix). In Montana the percentage of all career fire departments that serve a population of 10,000 to 24,999 is 100%. Interview with Montana Fire Departments, R. Schmidt (personal communication, February 28, 2000). The author does not think this is a coincidence but a direct result of interpretation and application by union fire fighters of the Montana Codes Annotated 7-33-4109 and 4128.

The author is currently the fire chief of the Livingston, Montana Fire and Ambulance Department. The implications for organizations can be described by the current situation in Park County, Montana where the City of Livingston is the County Seat. The City of Livingston Fire Department is required by law MCA 7-33-4101. The Livingston Fire Department protects an area of three and one half square miles and a population of about eight thousand people within the city limits with fire services only. Staffing for the Livingston Fire Department is fourteen full time and six reserve fire fighters from one fire station. The Livingston Fire Department also provides emergency medical services and ambulance transportation for Park County, Montana. The service area for the emergency medical and ambulance services is 2,620 square miles.

The City of Livingston is surrounded by another fire department, Park County Rural Fire Department, a volunteer fire department. It is not legal in the state of Montana to consolidate with the Park County Rural Fire Department.

“A municipal fire department may not be merged with a rural fire district into a single fire protection agency;” (Montana Attorney General’s opinion Volume number 43, Opinion number 56).

The implications of trying to improve fire department efficiency in such a restrictive environment are simple. As the area outside the City of Livingston grows, the ability to serve emergency medical customers from one location and a service area of 2,620 square miles becomes impossible. The Livingston Fire Department will continue simply because it is required by law. The author cannot say at this time what may become of the ambulance service currently provided by The City of Livingston to Park County or

any other similar fire department based ambulance providers in a similar situation in the State of Montana.

Fire department authorized and required. In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part. (MCA 7-33-4101, 1999 Edition).

The ambulance service currently provided to Park County by the Livingston Fire Department may, at some point, go out of business because an outside agency that is not controlled by Montana State law may become the emergency medical provider for the current service area of the Livingston Ambulance service.

### **RECOMENDATIONS**

1. What are the laws regarding municipal and paid fire department staffing for communities in Montana?

In the state of Montana every city or town must have a fire department.

In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part.

(MCA 7-33-4101, 1999 Edition).

It is the recommendation of the author that MCA 7-33-4101 be updated to read,

“Every city or town may contract for fire protection services or consolidate its fire department with another fire protection provider or create its own fire department as may be required by the local government under this part.”

Changing the wording would relieve each community from the responsibility of having its own fire department and would allow for consolidation of city and county fire department's which is currently illegal in the State of Montana.

The author recommends that MCA 7-33-4109 be abolished.

“ In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.”  
(MCA 7-33-4109, 1999 Edition).

If MCA 7-33-4101 is rewritten there is no requirement for a community to have its own fire department. The requirement to regulate at what point paid firefighters could be supplemented by volunteer fire fighters is moot.

The same recommendation is made for MCA 7-33-4128.

Minimum wages of firefighters in cities of the first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least \$750 per month for the first year of service and thereafter at least \$750 per month plus 1% of said minimum base monthly salary for each additional year of service.

(MCA 7-33-4128, 1999 Edition).

Again, if MCA 7-33-4101 is rewritten there is no need to regulate the salaries of firefighters in cities of first and second class. The potential in the future for city, county,

multi jurisdictional, and multi county fire department services would then exist. There would not be any reason to regulate the salary of fire fighters in a community by state statute. Fire fighters may work for the salary, environment or combination of work conditions that they would find acceptable. In addition, fire fighters who are now restricted because of their employment to a specific community may find more diverse career opportunities, such as hazardous materials response, wildland or interface fire protection. The opportunity for lateral transfers of fire fighters in the State of Montana could become a reality.

2. What other states have laws that require a paid fire department in relation to community population?

The State of Montana is the only state that has laws that require a paid fire department in each community by population or requires a paid fire department, period. It is the recommendation of the author to evaluate these laws in light of the previous recommendations. Given the fact that Montana is the only state in the entire United States that has these fire department laws it seems logical that they may be unnecessary.

3. What do elected officials in Montana State government know about laws pertaining to fire department staffing and the impact of these laws?

The author recommends that elected officials in the State of Montana be more informed about laws that have such a significant impact on fire protection in a community. This applied research will be provided to each elected official interviewed for this research project. It is hoped that this paper will help to educate elected officials about the ambiguous laws concerning fire department paid staffing based upon community population.

Providing this research paper to elected officials, chief officers, and Montana's professional fire fighters may provide the information needed for change. By describing how restrictive, unique and misunderstood the State of Montana's laws concerning community fire departments have become, maybe some corrective action can be taken. The recommendations made in this section are meant to encourage fire fighters to evaluate the laws currently in place that regulate the fire service in Montana. The author advises fire fighters to consider the options to improve community fire service delivery. Fire fighters should study other state statutes regarding fire service delivery and choose the best options for effective, safe and efficient fire service delivery in their community.

**REFERENCES**

Classification of municipalities, Montana Codes Annotated, § 7-1-4111, (1999).

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Fire department authorized and required, Montana Codes Annotated, § 7-33-4101, (1999).

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Minimum wages of firefighters in cities of first and second class, Montana Codes Annotated, § 7-1-4128, (1999).

Opinions of the Attorney General, Opinion No. 57, Volume No. 43, State Law Library, Helena, Montana. (July 25, 1991).

Supplemental volunteer fire department authorized for cities of second class, Montana Codes Annotated, § 7-1-4109, (1999).

***Appendices Not Included. Please visit the Learning Resource Center on the Web at <http://www.lrc.fema.gov/> to learn how to obtain this report in its entirety through Interlibrary Loan.***