

Opinion No. 55-6164

May 18, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

In your letter of May 6, 1955 you request our opinion concerning the legality of paying salaries to members of a City Fire Department from the General Fund of the City, in view of the fact that the City is participating in the annual distribution of the Fire Protection Fund pursuant to Section 58-5-2, N.M.S.A., 1953 Compilation.

You call our attention to Attorney General's Opinions Nos. 3938 and 4631. These opinions are no longer applicable inasmuch as the statute has been substantially amended since their rendition. At the time they were written, Fire Protection Fund distribution was limited to municipalities operating a volunteer fire department. This provision no longer prevails and all municipalities having the minimum amount of fire apparatus and equipment are eligible to participate in the Fund. Funds so secured may not be used for paying the salaries of Fire Department personnel. The only source of payment for such personnel would be the General Fund of the municipality.

Under Sections 14-24-1 and 14-21-21, N.M.S.A., 1953 Compilation, municipalities are authorized to establish and provide proper means for protection from fire and to provide for the use and management of fire extinguishing equipment by voluntary fire companies or otherwise.

Section 14-21-3 of the 1953 Compilation, gives the municipalities the power to appropriate money for corporate purposes. Inasmuch as the operation of a particular fire department is within the corporate purposes of the municipality as defined above, a municipality has authority to appropriate and budget necessary sums for that purpose from its General Fund. If this were not possible, all municipalities would be relegated to operating volunteer fire departments. Obviously, in municipalities, such type of operation would not furnish proper fire protection.

Your attention is called to Chapter 221, Laws of 1955, by virtue of which Fire Protection Fund distributions will be repealed effective June 10, 1955. It is obvious that such action on the part of the Legislature was through inadvertence or typographical error; none the less, the repeal is unambiguous. Distribution for the current year must therefore be paid prior to June 10th or not at all. Distributions for the following year cannot be made until and unless the Legislature at its next session re-establishes the repealed statute.

By: Walter R. Kegel

Assistant Attorney General