

Opinion No. 59-80

July 28, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mrs. Annie Dikeman Clerk, Village of Roy Municipal Building Roy, New Mexico

{*137} This letter is in response to your recent request for an opinion of this office as to whether the Village fire department may:

1. properly expend funds from the Fire Protection Funds for the purpose of developing water wells for the village fire system.

It is my opinion that the Village of Roy may properly utilize the money from the Fire Protection Fund for the purpose of developing water wells for the village fire system.

Attorney General's Opinion No. 5153 was uttered in May, 1948 and answers the same question to the effect that the funds could be expended for the purpose of obtaining an adequate water system for the purposes of the fire department. Section 60-402, 1941 Compilation, as successively amended, upon which the above numbered opinion was uttered, has since been repealed in its entirety.

Chapter 297, Laws of 1959, entitled "Fire Protection Fund Act" is now controlling.

Chapter 297, Laws of 1959, Section 9, reads in part as follows:

"Any amount so distributed from the fire protection fund, to any incorporated city, town or village, or to any independent fire district, **shall be expended only for the maintenance of its fire department, the purchase, construction, maintenance, repair and operation of its fire stations, including sub-stations, fire apparatus and equipment**, the payment of insurance premiums upon such fire stations, substations, fire apparatus and equipment, and insurance premiums for injuries or death of firemen as otherwise provided by law." (Emphasis Supplied)

The comparable part of former Section 60-402, N.M.S.A., 1941 Compilation, as amended (Sec. 58-5-2, N.M.S.A., 1953 Compilation and Sec. 58-5-2.1 p.s.) and to which Attorney General's Opinion No. 5153 was directed, was as follows:

". . . The money so distributed to such cities, towns and villages **shall be expended only for the maintenance of such fire departments, the purchase, maintenance, repair and operation of fire apparatus and equipment**, the payment of insurance premiums upon fire apparatus and equipment including buildings housing such fire department and insurance premiums for injuries or death of firemen as otherwise provided by law." . . . (Emphasis Supplied)

{*138} During the last decade, the original Section 60-402 has been amended on several occasions and the descending sections were repealed in their entirety by Chapter 297, Laws of 1959. While the new Fire Protection Fund Act is much more comprehensive and has effected some important changes, the section dealing with the purposes for which the fund may be expended has been relatively unchanged. (See above comparison)

That an adequate supply of water is regarded by the legislature as essential to a fire-fighting system is made obvious by the provisions of Section 6 (c), Chapter 297, Laws of 1959, in which an adequate water supply is made a requirement for the establishment of an independent fire district.

It is my opinion that the purposes for which Fire Protection Funds may be expended by the Village includes the development of an adequate water supply for the fire fighting system since an adequate water supply is a necessary and integral part of any fire department.

By: B. J. Baggett

Assistant Attorney General