

Opinion No. 59-94

August 10, 1959

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

TO: Mr. R. F. Apodaca Superintendent of Insurance State Capitol Building Santa Fe, New Mexico

{*153} This is in answer to your recent request for an opinion on the following:

Is the payment of rental for fire hydrants a legitimate expenditure from the fire protection funds?

In my opinion fire hydrants are an integral part of the fire fighting system and fire protection funds may properly be expended for hydrant rental expense.

Attorney General's Opinion No. 5910 held that the rental of fire hydrants could properly be paid out of the fire protection fund. That opinion was rendered in 1954. The only question remaining is to determine whether or not the law has undergone sufficient change to alter this holding.

The wording of the statute under which Opinion No. 5910 was rendered is 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**, . . ." (Emphasis supplied) (§ 58-5-2, N.M.S.A., 1953 Comp.)

The present wording of Chapter 297, Laws of 1959, Section 9, codified as Section 58-5-2.10, N.M.S.A., 1953 Comp. P.S.), is as follows:

"Any amount so distributed from the fire protection fund to any incorporated city, town or village, or to any independent {*154} 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**, . . ." (Emphasis supplied)

The purpose for which such funds may be expended has not been restricted or limited by the enactment of the present law. In fact, it has been broadened to include specifically fire stations and sub-stations while retaining the former wording almost verbatim.

The legislature, in repealing the former law and enacting Chapter 297, Laws of 1959, had before it the previous interpretation of the wording set out above in the old act. The fact that no exclusions were made or words of limitation inserted in the new act leads

me to believe that the legislature intended the "purposes" as defined in the new act to remain substantially the same as under the old act, together with the legal interpretations previously given thereto.

It is my opinion that the purposes for which fire protection funds may be legitimately expended would include the payment for fire hydrant rental.

By: B. J. Baggett

Assistant Attorney General