

Opinion No. 17-2052

September 17, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Mr. Scott Etter, Sec. and Treas. Pecos Water Users' Assn. Carlsbad, New Mexico.

Volunteer Fire Departments Expend funds Under Supervision of the City Authorities.

OPINION

We have your inquiry of the 17th instant wherein you ask for a construction of Section 2 of Chapter 96 of the Laws of 1915, relating to volunteer fire departments. This section reads as follows:

"All fire departments receiving any money under the provisions of this act shall use the same under the direction of the governing body of cities, towns and villages and for maintenance and equipment and shall make annual report to the State Auditor showing amounts of money received and the disbursements thereof."

Your first question is as follows:

"Admitting that if the Fire Department of Carlsbad desired to purchase fire equipment they would first have to get the consent of the Town Council, but reversing the situation, can the Town Council arbitrarily take the funds from the treasury of the Volunteer Fire Department without the consent of the Volunteer Fire Company for the same purpose."

I hesitate to make you a positive reply to this question, because the section is so indefinite that it is difficult to tell how it might be interpreted if ever brought before a court, however, I will state briefly my opinion of the intent of the section. The phrase "under the direction of" has been several times defined by the courts of this country and it is generally held to carry the idea of supervision, rather than of positive command. The Act clearly says that the fire departments shall use the money and I think it was intended to make the city authorities a sort of a check on the fire departments. In other words, I think the fire departments possess the initiative in the use of the money and the city authorities have merely supervisory powers. There would be no object in paying any money to the fire departments at all if the city authorities are able to arbitrarily take the money away from them and spend it without the consent of the fire departments. It seems to me that the expenditure of such funds must first be authorized by the fire departments, and that the city authorities possess a supervisory or veto power.

Your second question is as follows:

"Are the funds accumulated under the old law and prior to the passage of this act subject to the provisions thereof."

It seems that the section above quoted is very clear in providing that it is the money received under such act that shall be used under the direction of the governing bodies of the cities. The act itself does not relate to accumulated funds acquired under the old law.