

Opinion No. 41-3734

March 3, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*44} This will acknowledge receipt of your letter of the 27th wherein you request an opinion as to the authority of the State Board of Finance to approve a claim submitted by the chief of the fire department and the mayor of the village of Wagon Mound for personal injuries sustained by a volunteer fireman while engaged in the performance of his duties, such claim to be paid out of the so-called "fire protection fund," created by Section 71-128, New Mexico Statutes, Annotated, 1929 Compilation.

Section 71-128 of the New Mexico Statutes, Annotated, 1929 Compilation, as amended by Chapter 102 of the New Mexico Session Laws of 1935, reads in part as follows, to-wit:

"* * * Annually or before the last day of July, the **state treasurer** shall distribute the money in the "fire protection fund" to each incorporated city, town and village which has for at least one year prior to such distribution, maintained an official fire department possessing fire apparatus and equipment in serviceable condition of at least the value of one thousand dollars (\$ 1,000.00), in proportion to which the population of such city, town or village bears * * *".

Subsequent to the distribution of the money in the "fire protection fund" as set out above, the statute above referred to goes on to say:

"* * * The money so distributed to such cities, towns and villages shall be expended **only** for the maintenance of such fire departments and the purchase and repair of fire apparatus and equipment under the direction of the chief of the fire department in the city, town or village, where said fire department is a volunteer department serving without pay, * * *".

In view of the foregoing, it is my opinion that the State Board of Finance would certainly have no authority to approve any such claim as requested by the chief of the fire department and the mayor of the village of Wagon Mound. The statute above referred to outlines the exact procedure to be followed in distributing the money in the "fire protection fund," and the writer believes it to be mandatory upon the state treasurer to distribute said money in accordance with said section of the law above quoted.

As to whether or not it would be proper for the village to expend any of the money under the direction of the chief of the fire department out of the said fund to defray the expenses of personal injuries received by a member of the volunteer fire department,

we do not pass on at this time, although we are doubtful as to the legality of such an expenditure.

Trusting that the foregoing sufficiently answers your inquiry, I am

By Howard F. Houk,

Asst. Atty. General