

**Opinion No. 41-3757**

April 1, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Gerald Champion, Mayor Village of Tularosa Tularosa, New Mexico

{\*55} This will acknowledge receipt of your letter dated March 25, 1941, in which you request that this office advise you as to the liability of the Village of Tularosa in cases of accidents in which the community fire truck is involved.

Torts committed by members of any municipal corporation or by officers thereof when done by authority of such municipal corporation, or in execution of the orders thereof, subject only the municipality to liability and not the officer or member. Section 90-623, New Mexico Statutes, Annotated, 1929 Compilation.

In view of the foregoing, I am of the opinion that the municipal corporation would be liable for any willful wrong or negligent act done in line of duty causing personal injuries or property damage by a volunteer fireman or the municipal fire truck. It might be wise to expend municipal funds for personal injuries and property damage insurance. However, I wish to call to your attention Section 71-128, New Mexico Statutes, Annotated, 1929 Compilation, which provides that the State Fire Prevention Fund, annually distributed to municipalities having \$ 1000.00 worth of serviceable fire fighting equipment, shall be expended "only for the maintenance of such fire departments and the purchase and repair of fire apparatus and equipment."

The foregoing section has been construed to prohibit the expenditure by a municipality of part of this fund for accident insurance. (See opinion of Attorney General No. 891, written by Frank Patton, dated February 4, 1935, enclosed herewith.)

In view of the foregoing, my suggestion is that portions of the fire prevention fund now in the municipal treasury should not be expended for personal injuries or property damage insurance. Other funds may be expended for this purpose.

By GEO. H. HUNKER, Jr.

Asst. Atty. General