

Opinion No. 42-4003

January 28, 1942

BY: EDWARD P. CHASE, Attorney General

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

{*150} Receipt is acknowledged of your letter dated January 26, 1942, requesting an opinion relative to the use and expenditure of the Fire Protection Fund disbursed by the state to municipalities.

Chapter 146, Laws of 1941, amending Section 1, Chapter 102, Laws of 1935, provides for the distribution of this fund to municipalities, and also provides for the expenditure of the same by municipalities in this language:

"The moneys 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 such fire apparatus, 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."

{*151} This law also makes certain exceptions to the original law pertaining to the expenditure of the money. The plan upon which you desire an opinion is that said Fire Protection Fund or a part thereof is proposed to be used in paying a stipulated amount each month to the individual members of the volunteer fire department, not as in the nature of salary or wages, but as an expense item by way of reimbursement for damage resulting to the clothing of the fireman in the pursuit of his duties. In a previous opinion, this office has ruled that payment of a nominal sum to members of a volunteer fire department for attendance at meetings and practices would be in the nature of payment of salaries and wages, and for that reason could not legally be made from the Fire Protection Fund.

A volunteer fireman assumes certain risks in performing his duties, and one of those risks is the soiling of his clothing. In my opinion, maintenance of a fire department does not include within its definition, laundry and cleaning, alternations and repair of volunteer firemen's personal clothing, and for that reason, I do not believe the plan submitted to you is legal nor that the Fire Protection Fund may be used for such purposes.

By C. C. McCULLOH,

Asst. Atty. General