

Opinion No. 44-4449

January 29, 1944

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of January 21, 1944, and the enclosed copy of the Resolution of the Village of Magdalena, in which your permission is asked to pay money from the Fire Protection Fund as rental for fire hydrants, such sums to be paid into the Water Meter Deposit Fund.

You ask two questions which are as follows:

"1. Can the money distributed from the Fire Protection Fund be used as proposed by the Village of Magdalena for the purpose of a 'Hydrant Rental Charge?'

"2. Is it necessary in compliance with the provisions of Section 60-402 New Mexico statutes 1943 Supplement, to secure the approval of the Superintendent of Insurance for an expenditure from the Fire Protection Fund, such as that contemplated by the Village of Magdalena?"

In answer to your first question, please find enclosed a copy of Opinion No. 3892 dealing with this question.

From the Resolution, it is apparent that the procedure is in the nature of a subterfuge to accomplish a budget transfer from the Fire Protection Fund to the Water Meter Deposit Fund, so that the proposed expenditure comes squarely within the enclosed opinion.

In answer to your second question, your attention is directed to the last paragraph of Chapter 60-402 of the 1941 Compilation, as amended by Chapter 37 of the Laws of 1943, which is as follows:

"Provided further that no expenditure for fire buildings, or expenses of attending schools and conventions shall be made without first obtaining the written approval of the superintendent of insurance, nor until all obligations of said fund previously incurred have been paid."

This section makes it your duty to pass on expenditures only when they are made for fire buildings or expenses of attending schools and conventions. Therefore, it is my opinion that as to other expenditures it is not necessary to secure your approval. However, your attention is directed to the fact that all expenditures by municipal corporations come within the supervisory control of the State Comptroller. I would

therefore suggest that you forward the request to Mr. Sebastian, together with a copy of the opinion which I am enclosing herewith.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Assistant Attorney General