

Opinion No. 52-5541

May 23, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Charles C. Sage Brigadier General The Adjutant General Santa Fe, New Mexico

{*251} This is in reply to your inquiries of May 19th with regard to the purposes and objects for which you might lawfully approve the expenditure of Civil Air Patrol Funds by the New Mexico wing of the CAP.

The Department of Civil Air Patrol was legally established and the initial appropriation therefore provided by Chapter 147 of the Laws of 1949. This 1949 Act is the only basic law dealing with the Civil Air Patrol except for the 1951 appropriation act for your department which included a sum for the operation of the CAP for the current and past fiscal years.

The 1949 statute provided funds for the CAP and also provided certain definite criteria as to what those funds might be expended for. It is my opinion that the legislative intent as expressed in the 1941 law must control the expenditure of all CAP funds until the Legislature provides otherwise.

Section 2 of Chapter 147 of the Laws of 1949 states in part:

. . . "that there shall be expended from the moneys hereby appropriated only such sums as shall be needed to replace equipment which shall not be replaced by the United States Government, the United States Air Force or any other agency, and for the purpose of defraying expenses incurred in actual rescue work or mercy missions and for training purposes, and for upkeep of communications systems which have been or are in the process of being installed throughout the state of New Mexico, and provided that only such sums shall be expended on communications systems as will be necessary for the procurement of equipment or replacements not otherwise obtainable by grant or gift from any other source. No sum of money shall be expended for uniforms or personal equipment of any member of the Civil Air Patrol, nor shall any sum or sums of money be paid out from funds appropriated for any salaries."

{*252} It is my opinion that the foregoing language is controlling as to the expenditure of current appropriations. Your approval of expenditures should be limited to the purposes authorized by statute.

In your second request you set forth a number of examples of expenditures made from CAP funds in the past and asked me to comment on whether or not in my opinion, they were expenditures properly made under any of the authorized categories.

As a practical matter there is no way that I can determine the propriety of individual expenditures unless I can be made fully conversant with all the facts and circumstances regarding the purchase, the need for the item and its intended use. These facts are peculiarly within the knowledge of the CAP officials.

The Legislature made the expenditure of CAP funds expressly subject to approval of the Adjutant General. There has been no change in the law in this regard. The responsibility of approval carries with it the implied duty to inquire into and determine the propriety of these expenditures.

You have both the duty and authority to determine whether any particular proposed expenditure falls within the list of authorized purposes prescribed by the Legislature.

Referring again to the language quoted from the statute it is my opinion that funds may be expended only when you consider them to be intended for the following purposes:

1. To **replace** equipment. (And then only for equipment not replaced by any Federal or State department or agency).
2. For rescue work.
3. For mercy missions.
4. For training purposes. (How broadly this item is construed must seem to depend upon the current CAP program).
5. Upkeep of communications. (This item limited to communications systems in existence or being installed upon the effective date of the 1941 Act.)

The replacement of communications equipment is limited to replacement of items not obtainable through grant or gift. Payment of the cost of uniforms or of any salaries is specifically prohibited.

I trust that you will find the foregoing to be an adequate guide as to the exercise of your duty and authority to pass upon the expenditure of CAP funds.