

Opinion No. 53-5863

December 7, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Fred W. Moxey Chief Tax Commissioner Santa Fe, New Mexico

{*286} Mr. Thos. G. Cornish, City Attorney of Albuquerque, has referred to us your request for an opinion. Although the request was made by him, we shall consider it as being made by you.

The City Manager of Albuquerque proposes to pay 25% of the annual salaries of the City Treasurer, City Clerk, City Legal Department and City Manager out of the Water Fund. You request an opinion relative to the validity of such action.

§ 14-3523, 1941 Comp., provides as follows:

"The revenue derived from the operation of any public utility owned and operated by a municipality, for the purchase, construction, repair, improvement, or enlargement of which the municipality shall have issued bonds, shall be applied, (a) to the maintenance of said public utility in good repair, to the improvement and extension thereof and the payment of legitimate expenses of operation, (b) to the payment of the interest on the bonds so issued for the purchase or construction of such public utility, (c) to the creation of a sinking fund provided by the terms of the bonds or the law governing their issue."

If the city officials mentioned in your letter devote a portion of their time to work connected with the Water Department, such portion of their salaries would be considered a part of the legitimate expenses of operation authorized to be paid under the section above quoted. In the case entitled *Shirk vs. Lancaster*, 313 Pa. 158, 169 Atl. 557, 90 A.L.R. 688, dealing with the rates to be charged by a municipal water utility, the Court uses this language:

"Coincidentally with determining the fair value for the property, the cost of operating the plant must be ascertained. It includes all charges or expenses involved in the production, supply, and distribution of the commodity. This embraces among other items mentioned not only the salaries or wages of all persons employed directly by the city, but also a just portion of the salaries of elective officers whose time is engaged in that business."

Reasoning along the same lines as mentioned by the Court, it is felt that a just portion of the salaries of elective or appointed officers whose time is engaged in the business of the Water Department may, {*287} and perhaps should be, paid out of Water Department revenues.

Whether or not a flat 25% of the yearly salaries of the various officers correctly reflects the just portion of the time spent by the respective officers engaging in the business of the Water Department, presents a question of fact which would have to be determined on the basis of the actual facts in each case. Some officers may spend more than that proportion of their time upon this work and some less. The proportionate part being spent by each officer which would be a valid charge against the Water Department is a matter to be determined by the City Manager and the City Commission.

Trusting this satisfactorily answers your question, I am

By: C. C. McCulloh

Assist. Attorney General