

Opinion No. 54-6061

December 17, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*536} As we interpret your request of November 19, 1954, you have requested the opinion of this office as to whether or not county fire districts might obtain fire protection funds for the purchase of property containing a building to house its firefighting equipment.

Clearly, by virtue of § 58-5-2, N.M.S.A., 1953, incorporated cities, towns and villages with population over 5,000 may expend the allocated funds only for the maintenance of its fire departments, the purchase, maintenance, repair and operation of fire apparatus and equipment, the payment of insurance premiums upon fire apparatus and equipment, including buildings housing such fire departments and insurance premiums for injuries or death of firemen as otherwise provided by law. However, there is a proviso in the act giving municipalities of less than 5,000 population, the authority to purchase new buildings or additions to the buildings housing its fire department. The proviso, reads as follows:

"Provided that as to municipalities of less than five thousand (5,000) population the words 'maintenance of such fire department, and the purchase and repair of fire apparatus and equipment,' as used herein, shall include new buildings or additions to the buildings housing such a fire department and the expense of firemen, not exceeding the amount of one hundred fifty (\$ 150.00) dollars per year, in attending state schools and conventions for firemen for a period of not to exceed one (1) week per year, in addition to all items formerly included within the meaning of said terms."

There is a further proviso which reads in part as follows:

"* * * Provided, further, that all expenditures by municipality of funds received under this act shall be made upon duly executed vouchers approved by the board of trustees of the municipality in the same manner as other funds of the municipality are disbursed, but no expenditure for fire buildings, or expenses of attending school 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; Provided further that fire districts established by the county commissioners of any county outside of incorporated communities shall be entitled to an annual distribution as provided in this act. * * *"

Although the Legislature did not specifically state that fire districts established by the county commissioners of any county outside of incorporated communities might expend funds for new buildings or additions to the buildings housing such fire departments, it is

our opinion that these two provisos show a legislative intent to allow the expenditure of fire protection funds for the purpose of obtaining buildings to house its fire apparatus in instances where the municipality has a population of less than 5,000, or {*537} where there is a fire district established by the county commissioners of any county outside of incorporated communities.

Therefore, it is our opinion that pursuant to the above quoted provisos, you may grant written approval for the expenditure of fire protection funds to fire districts established by the county commissioners of any county outside of incorporated communities for the purpose of obtaining property containing a building to house fire fighting equipment, provided said fire districts meet the additional qualifications as enumerated in the entire section of the above referred to statute.

Although this office has previously ruled that the state or its subdivisions might not expend money for buildings already erected, nevertheless, those opinions were concerned with provisions of our laws concerning the erection of public buildings. A reading of this entire section with which we are herein involved does not indicate that the Legislature would prohibit the purchase of a building already erected since the language contained therein does not specify the erection of said buildings.

By: Jack A. Smith

Assist. Attorney General