

Opinion No. 56-6505

August 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

We have your letter of July 27th in which you request an opinion from this office upon the following question:

Should the Village of Hatch pay premiums upon insurance for Workmen's Compensation coverage for personnel of the volunteer fire department?

It is our understanding that the volunteer firemen are not compensated directly or indirectly for their services and that the Village carries accident and hospitalization insurance on the volunteer firemen in another policy. As you pointed out in your letter, this office in Opinion No. 477, dated July 20, 1932, has ruled that the Workmen's Compensation does not apply to volunteer firemen under these conditions.

We are of the opinion that Opinion No. 477 is still controlling in the State of New Mexico. We have examined the law subsequently to the rendition of this opinion and from our examination find that volunteer firemen are covered by Workmen's Compensation usually because of special provisions in the Statute. See Schneider, Workmen's Compensation, Vol. II, Section 392 (a) at page 343.

We can find no particular provisions extending coverage to volunteer firemen in the New Mexico Workmen's Compensation Law. Also as pointed out in Opinion No. 477, since there is no payment for services it is doubtful that such volunteer firemen is an employee or workmen within the definition of the Workmen's Compensation Act. We also call your attention to Section 14-20-1, N.M.S.A., 1953 Compilation, which reads as follows:

"Any incorporated city or town having a regular organized volunteer fire department may take out for the protection of such volunteer firemen an accident policy or policies, in some accident insurance company authorized to do business in the State of New Mexico, and pay the premium therefor out of the fire fund of such incorporated city or town. Such policies shall provide for the payment to such volunteer firemen of suitable sums for injuries, and a gross sum of not less than \$ 2,000 in case of death."

It is evident that by this section the Legislature intended to provide for volunteer firemen in lieu of coverage by the Workmen's Compensation Law.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General