

Opinion No. 57-213

August 26, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Edward M. Hartman, Director, Department of Finance and Administration, State
Capitol Building, Santa Fe, New Mexico

QUESTION

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Where a volunteer fireman is injured in the line of duty, may the Town of Grants pay medical bills not fully covered by provided insurance?

CONCLUSION

No, insurance authorized by statute is the only method of paying the loss.

OPINION

ANALYSIS

In providing for the "Fire Protection Fund" and the distribution and use thereof, Section 58-5-2.1, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, states, in part, as follows:

". . . The money so distributed to such cities, towns and villages shall be expended only for the maintenance of such 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**. The expenditure of such funds shall be under the direction of the city council, commission or board of trustees, as the case may be, and in no event shall the moneys in any fire fund be diverted into any other use than those expenditures that relate specifically to fire fighting equipment and fire protection" (Emphasis supplied.)

Section 14-20-1, N.M.S.A., 1953 Compilation, specifically permits payment of accident and life insurance policy premiums out of local fire funds in all cases where a volunteer fire department is organized.

In the instant situation, a member of the Grants Volunteer Fire Department was injured while serving as a member of that organization. The Town of Grants carried insurance coverage for each fireman in the sum of \$ 500.00. The total medical expenses in this

case, however, amounted to \$ 744.31, or \$ 244.31 more than was covered by the provided accident policy.

The manifest intent of the Legislature in providing for the "Fire Protection Fund" was to assure every municipal and county fire district funds for the establishment and maintenance of a fire fighting organization. It was further the manifest intent of the Legislature that the moneys paid into this fund and subsequently distributed to the local fire fighting organizations were to be used for no purpose unrelated to fire protection.

While it has been stated that moneys distributed to local Fire Protection Funds may be used for maintenance of equipment, Attorney General's Opinion No. 1457, dated October 29, 1936; the expenses for training firemen out of state, Attorney General's Opinion No. 4529; obtaining adequate water supplies, Attorney General's Opinion No. 5153 and the rental of fire hydrants, still there is no suggestion that direct payment of compensation for personal injuries may be made from the funds.

Since the law specifically provides for payment of insurance premiums for the protection of voluntary firemen, then it must be concluded that insurance is the method intended by the Legislature for indemnifying such persons injured in the line of duty. Should medical and hospital bills be paid directly from the established fire funds, then there would be no reason for the individual fire protection districts to maintain any insurance coverage.

Accordingly, it is our opinion that the statutes must be followed and that direct compensation payments for personal injuries are not provided for therein.