

Opinion No. 57-264

October 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Mr. Ralph F. Apodaca, Superintendent of Insurance, State Department of Insurance, Santa Fe, New Mexico

QUESTION

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May fire protection funds of the Rio Arriba County Fire District No. 2 be used to purchase and install fire hydrants on the Tierra Amarilla Mutual Domestic Water Consumers Association Line?

CONCLUSION

Yes, if the Superintendent of Insurance either lists this as a proper item or if he gives special permission to use the money in such a way.

OPINION

ANALYSIS

Chapter 39, Laws 1957 directs the Superintendent of Insurance to determine what "fire fighting equipment, apparatus and other items relating to fire protection which may be purchased with fire fund money." Items not on list can only be purchased by special written approval of the Superintendent of Insurance.

If fire hydrants are on the approved list, they could be purchased. However, from your request we assume that such items have not been placed on the list. In this case, the Superintendent of Insurance must determine whether this particular item is needed equipment for this Fire District.

We believe that the statute itself provides a clue to the answer to this problem wherein subsection C of Chapter 39, Laws 1957, provides that before fire funds can be given to a Fire District, there must be an adequate water supply. It seems only reasonable that such supply also must be made available for use. We would conclude that you have authority to determine whether this equipment is needed so that adequate service can be rendered by this Fire District.

We believe that by requiring proper safeguards you can authorize the expenditures of this fund for the purchase and installations of fire hydrants. It seems that before making

this authorization you should see that the Tierra Amarilla Mutual Domestic Water Consumers Association has agreed with the Rio Arriba County Fire District No. 2 that water will be furnished for fire protection and be available when needed. We therefore conclude that it is within your discretion to authorize this expenditure, if you determine that fire hydrants will be, under circumstances existing in Tierra Amarilla, equipment which would aid in giving fire protection to this District.

We call your attention to Opinions of the Attorney General pertaining to this fund which may serve as a guide in your determination:

- (a) No. 3892 authorized the use of this fund as fire hydrant rental.
- (b) No. 4449 affirmed No. 3892.
- (c) No. 5153 authorized the use of this fund to provide for a "water storage tank."
- (d) No. 5910 again authorized the use of this money for fire hydrant rentals.

We are enclosing copies of these opinions.