

**Opinion No. 59-143**

September 16, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Robert D. Castner Secretary /- State Board of Finance Santa Fe, New Mexico

{\*218} This is in reply to your recent letter forwarding for our opinion the question of Mr. Albert O. Lebeck, Jr., City Attorney, Gallup, asking whether a rescue truck can be purchased by the City of Gallup for use by its volunteer fire department with civil defense funds with the Federal government paying for one-half its cost, provided such rescue truck would be available for civil defense purposes whenever needed.

My answer to Mr. Lebeck's question is that in my opinion, such a rescue truck may be so purchased, provided the truck is at all times available for civil defense purposes.

The Federal Civil Defense Act of January 12, 1951, (64 Stat. 1246) as amended by the Act of August 8, 1958, (72 Stat. 537; 50 U.S. Code, App. Secs. 2251 **et seq.**) provides in part:

§ 2281, Functions of Administrator. "The administrator [Federal Civil Defense Administrator] is authorized, in order to carry out the abovementioned purpose, to \* \* \* (Brackets Added)

(i) Make financial contributions, on the basis of programs or projects approved by the Administrator, to the States for civil defense purposes, including, but not limited to the, procurement, construction, leasing, or renovating of materials or facilities \* \* \* Provided, That no contributions shall be made for the procurement of land: \* \* \* Provided further, That the amounts authorized to be contributed {\*219} by the Administrator to each state for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws: \* \* \* Provided further, that the amounts paid to any State under this subsection shall be expended **solely** in carrying out the purposes set forth herein and in accordance with State civil defense programs or projects approved by the Administrator: Provided further, That the Administrator shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any **facility** which (1) is intended for use, in whole or in part, for any purpose other than civil defense \* \* \*" (Emphasis Supplied)

The Act at 50 U.S. Code, App. 2252 defines "facilities" as buildings, utilities, and land. Further, a good statement of the purposes of the act is found in Section 2 of the Act of August 8, 1958, (50 U.S. Code, App. 2251):

§ 2251. "It is the sense of the Congress that the defense of the United States, in this thermonuclear age, can best be accomplished by enacting into law the measures set forth in this Act. It is the policy and intent of Congress to provide a system of civil

defense for the protection of life and property in the United States from attack. It is further declared to be the policy and intent of the Congress that the responsibility for civil defense shall be vested jointly in the Federal Government and the several States and their political subdivisions \* \* \*."

Therefore, it will be seen that the rescue truck would undoubtedly be needed and used, if necessary, for the purposes mentioned in the Act. Further, it is apparent that the truck would not be a "facility" as defined by Section 2252, and subject to the restrictions contained in Section 2281 (i). Therefore, even though the Act provides that Federal funds to States for organizational equipment shall be expended "solely" for the purposes of the Act and in accordance with State civil defense programs, it is my opinion that the purchase of the truck, if in accordance with the State program, is allowable, i.e., an expenditure for equipment to be available for civil defense purposes, even if such equipment is not used wholly for such purposes, would still be expended "solely" for the purposes of the Act. This view is strengthened by the lack of any prohibition in the Act relating to expenditures for equipment as is found relating to expenditures for facilities.

There certainly is no prohibition in the New Mexico Statutes against such a purchase. The State Civil and Defense Mobilization Act (Chap. 190, Laws 1959) is compiled in Sections 9-13-15 through 9-13-24, N.M.S.A., 1953 Comp. PS. Section 9-13-22 authorizes each political subdivision of the state to make appropriations for the payment of expenses of civil and defense mobilization and further authorizes the political subdivision with the consent of the Governor to accept offers of Federal aid. Thus, if the aid from the Federal government is allowable, the City, with the consent of the Governor, may accept it.

I conclude that if the funds of the Federal government are offered to match funds of the City of Gallup to purchase a rescue wagon to be used by the fire department for regular use, but available for civil defense purposes and when if needed, the City is authorized to accept such Federal funds if such purchase is approved by the Governor.

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