

Opinion No. 62-95

July 24, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Ethan K. Stevens, Assistant District Attorney, P. O. Box 336, Clayton, New Mexico

QUESTION

QUESTIONS

1. May an incorporated village properly expend monies from the Fire Protection Fund for the purpose of drilling a water well located on fire station property if such well is utilized for the purpose of having water available in sufficient quantities to fight fires and where such water well is not connected in any manner to the village system?
2. May Fire Protection Funds distributed to a village be expended for the purpose of drilling of a water well to supplement the village water supply if the well is connected to such system only for the purpose of assuring sufficient water for fighting fires?

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

The answers to the questions posed above are governed by the provisions of Sections 58 - 5 - 2.10 and 58-5-2.13, N.M.S.A., 1953 Compilation. These two sections provide as follows:

"58-5-2.10. Expenditures from moneys distributed from fire protection fund. -- Any amount so distributed from the fire protection fund to any incorporated city, town or village, or to any independent fire district, shall be expended only for the maintenance of its fire department, the purchase, construction, maintenance, repair and operation of its fire station, including substations, fire apparatus and equipment, the payment of insurance premiums upon such fire stations, substations, fire apparatus and equipment, and insurance premiums for injuries or death of firemen as otherwise provided by law. **Provided, however, that no money shall be expended from such fund for any purpose relating to the water supply systems of any such city, town, village or**

district, nor for the improvement or construction of such systems nor for the purchase, rental, installation or maintenance of fire hydrants nor for any other appurtenances relating to the distribution or use of such water supply system.

Funds so distributed from the fire protection fund to any incorporated city, town or village, or to any independent fire district, may also be expended, in an amount not to exceed three hundred dollars (\$ 300) in the aggregate during any period of one (1) year, for the expense of any firemen for attending any fire schools and conventions approved by the superintendent of insurance." (Emphasis supplied).

"58-5-2.13. Control and Diversion of Expenditures. -- Amounts so distributed from the fire protection fund to any incorporated city, town or village or to any independent fire district shall be expended under the direction of the chief of the fire department of such city, town, village or district, upon duly executed vouchers approved as required by law, **and in no event is any such amount to be expended for any purpose which does not relate directly to the permitted purposes specifically stated in Sections 9 and 10 (58-5-2.10, 58-5-2.11) of the Fire Protection Fund Act.**" (Emphasis supplied).

Under the provisions of Section 58-5-2.10, N.M.S.A., 1953 Compilation, the purposes for which Fire Protection Funds may properly be expended are specifically designated. As specified in Section 58-5-2.13, supra, it is expressly provided that such funds may be utilized only for purposes stated in Section 58-5-2.10, supra, or as specified under § 58-5-2.11, N.M.S.A., 1953 Compilation relating to the construction, purchase or equipping of new fire stations.

This office has previously held in Attorney General Opinion No. 59-80, dated July 28, 1950, that a village may properly expend Fire Protection funds distributed to such village for the purpose of developing water wells for a village fire system. In Attorney General's Opinions No. 57-264, October 16, 1957, and No. 59-93, August 10, 1959, it was also held that Fire protection Funds could properly be expended under the provisions of Section 58-5-2.10, N.M.S.A., supra, for the purchase, installation or rental of fire hydrants necessary for fire protection.

Following the issuance of the above opinions, however, the 1961 State Legislature amended Section 58-5-2.10, supra, to add the language underscored above, and narrowing the scope of permissible expenditures under the Fire Protection Act. In construing Section 58-5-2.10, supra, in light of the 1961 Legislative Amendment, we conclude that the governing body of a village may not properly expend monies distributed from the Fire Protection Fund to the village, for the purpose of drilling or constructing a water well for use by the village fire unit whether or not such well is connected or made an appurtenance to the village water supply system.

Under the provisions of Section 58-5-2.14, N.M.S.A., 1953 Compilation, the authority is given to the Superintendent of Insurance to establish rules and regulations which he may determine necessary to accomplish the objectives of the Fire Protection Fund Act. Under this section the superintendent is authorized to compile a list of fire fighting equipment, apparatus and other items which may properly be purchased by an

incorporated city, town or village or by any independent fire district from monies distributed from the Fire Protection Fund; however, the authority of the superintendent to designate such items which may be properly purchased is limited in scope to the type of permissible expenditures stated in Section 58-5-2.10, supra.

It should be noted that under the provisions of Section 58-5-2.10, supra, a village is not precluded from drilling water wells or in otherwise obtaining water essential for fire protection purposes where the funds utilized for such expenditures are obtained from other sources. The limitation contained in Section 58-5-2.10, supra, has application only in so far as it restricts the use of Fire Protection Funds for such purposes.