

Opinion No. 31-271

September 11, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. E. J. H. Roy, Member, Board of Trustees, Roy, New Mexico:

{*103} In regard to your query of September 9th, asking whether or not it would be lawful for the Board of Trustees of the Village of Roy to grant a water franchise with the following provision: "The grantee to be paid the sum of \$ 600 yearly for a term of ten years, as fire protection."

If said clause clearly defines the services to be rendered by the grantee, such clause in a water franchise would undoubtedly be lawful, but it is doubtful whether the language used is sufficiently broad in its description. A village, or any municipal corporation has the right to enter into any contract which it sees fit as a grantee of water franchise for the rendering of services and the delivery of water to the village.

That amount of money, however, which is derived from the State's Fire Fund or Insurance. Fund amounting to more than \$ 600.00 yearly, that being the amount which falls to the Village of Roy each year, it is doubtful that same can be expended for the payment of fire protection in the sense intended in the franchise. No doubt, the franchise intends that the grantee of the franchise shall furnish water for fire protection, but the use of the fund which is sent down each year from the State Treasury is specifically authorized for only certain purposes. We quote the law, in part, being Section 71-128 of the 1929 Code:

{*104} "The money so distributed to such cities, towns and villages shall be expended only for the maintenance of such fire departments, and the purchase and repair of such fire apparatus and equipment under the direction of the Chief of the Fire Department in that city, town or village, etc."

It is doubtful, as we view it, that the money expended in the manner contemplated by you would be either for the maintenance of the fire department or the purchase and repair of fire apparatus and equipment, so it is our opinion that you cannot expend that amount received from the Insurance Fund in the manner contemplated by you.