

Opinion No. 33-658

October 6, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. K. L. Hestead, Chief Roy Fire Department, Roy, New Mexico.

{*80} At the request of the Secretary of the State Firemen's Association, Mr. Rosenwald, I am writing this letter upon the following question:

"May the town board turn over to the fire department the funds received from the state out of the fire protection fund, and let the department make the purchase of equipment and supplies it thinks necessary?"

This question can be answered best by referring you to Section 71-128, 1929 Code which, in its pertinent part is as follows:

"* * * Annually on or before the last day of July, the state treasurer shall distribute the money in the "fire protection fund" to each incorporated city, town and village which has for at least one year prior to such distribution, maintained an official fire department possessing fire apparatus and equipment in serviceable condition of at least the value of one thousand dollars (\$ 1,000.00), in proportion which the population of such city, town or village bears to the combined population of all such cities, towns and villages, as such population is shown by the federal census next preceding such distribution: Provided, however, that the maximum amount to be distributed here-under to any such city, town or village, shall not exceed the sum of two thousand dollars (\$ 2,000.00), in any such distributive year. 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 fire apparatus and equipment under the direction of the chief of the fire department in the city, town or villages, where said fire department is a volunteer department serving without pay, and any person responsible for the expenditure of said funds contrary to the provisions hereof shall be liable to the state for all amounts so wrongfully expended, in an action to be brought for that purpose by the attorney general or the district attorney. * * *"

It will be noted that the payment of each municipality's share is to be distributed to the **city, town or village** entitled, under the act, thereto. This language impresses me with the belief that the money received from the fire protection fund comes to the municipality receiving same as **municipal funds** to be kept, paid out and accounted for as are other municipal funds. It is to be noted, however, that such funds can be expended only for certain purposes and are therefore impressed with a trust.

The above quoted section discloses such trust, as I term it, in the following language:

"The money so distributed to such cities, towns and villages shall be expended only for the maintenance of such fire departments and for the purchase and repair of fire apparatus and equipment **under the direction of the chief of the fire department** in the city, town or village, where said fire department is a volunteer department serving without pay." (Then follows a penalty for failure to so handle such money).

This language indicates that said money must be kept intact for the purposes set forth and the municipal {81} board must allow bills against such fund, within the amount available, as presented by or upon the order of the chief of the department. The failure or refusal of the board to allow such bills will sustain, in my opinion, an action in Mandamus.

Some complaint has been made by citizens of Roy, not connected with the fire department, to the effect that the fire fund is being used for other municipal purposes. This must be stopped or the statutory penalty will be invoked. This fund must be kept intact and the fire department is entitled, at all times to know the balance on hand.