

Opinion No. 41-3890

August 28, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. E. T. Scott, Chief Fire Department Magdalena, New Mexico

{*94} In your letter dated August 22, 1941, you state that the Municipal Board of the Village of Magdalena has used the general fire fund in years past for any and all municipal purposes and that they are threatening to so use the same this year and you are wondering what can be done to protect this fund.

Chapter 102, Laws of 1935, amending Section 71-128 of the 1929 Compilation, provides in part as follows:

"The money so distributed to such cities, towns and villages shall be expended **only** {*95} 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."

In view of the foregoing law, if the mayor and town board unlawfully spent any of this money, they will be liable personally and on their official bonds, if any, to the State of New Mexico for the expenditure of such funds contrary to the provisions of the above mentioned law.

By C. C. McCULLOH,

Asst. Atty. General