

Opinion No. 41-3938

October 30, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico. Attention: W. Carlos Powell

{*119} In your letter dated October 29, 1941, you ask whether it is permissible for a municipality to pay a nominal amount from the fire protection fund to members for their attendance at meetings and fire practices of the local fire department, and second, whether it is permissible for municipalities to pay premiums on regular insurance policies of the individual members of the fire departments.

{*120} Chapter 146, Laws of 1941, provides in part as follows:

"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 village, **where said fire department is a volunteer department serving without pay.**
* * *"

In view of the express provision in the law limiting the expenditure of the fire protection fund to instances where the fire department is a volunteer department serving without pay, it is my opinion that a payment of any amount to members for attendance at meetings or fire practices would thereby change the status of the fire department from a volunteer department to a paid fire department and that such expenditure would automatically prohibit the municipality from being eligible for receiving its share of such funds.

In answer to your second question, Chapter 20, Laws of 1935, provides as follows:

"Any incorporated city or town having a regular organized Volunteer Fire Department may take out for the protection of such volunteer firemen an accident policy or policies, in some accident insurance company authorized to do business in the State of New Mexico, and pay the premium therefor out of the Fire Fund of such incorporated city or town. Such policies shall provide for the payment to such volunteer firemen of suitable sums for injuries, and a gross sum of not less than \$ 2,000 in case of death."

Under authority of this law, a municipality may pay the premium on accident policies of volunteer firemen but could not pay the premium on any other type of insurance for the volunteer firemen without violating the provision of Chapter 146, Laws of 1941.

By C. C. McCULLOCH,

Asst. Atty. General