

Opinion No. 43-4364

August 13, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

In your letter dated August 11, 1943, you refer to a judgment in Cause No. 7012 in the District Court of Curry County, in which the plaintiff, as the holder in due course of certain promissory notes executed by the town of Texico, obtained judgment against the town.

From discussing this matter with you it seems that these notes were given as partial payment for a fire truck and the intention was to pay the notes from the fire protection fund; however, the fire truck was never delivered and the person purporting to sell the truck to the city is unable to make delivery. Under such circumstances payment of the judgment covering said notes could not, in any instance, be considered as payment for the fire truck.

You inquire whether payments may be legally made on this judgment out of the fire protection fund. Section 60-402 of the 1941 Compilation provides that money distributed to cities from the fire protection fund shall be expended only for the maintenance of such fire departments and the purchase and repair of fire apparatus and equipment, etc. Since payment on this judgment cannot be considered as the purchase of fire apparatus and equipment, it is my opinion that moneys in the fire protection fund received by the city of Texico may not legally be applied on this judgment, but must be applied in conformity with the provisions of Section 60-402 above mentioned.

By C. C. McCULLOH,

First Asst. Atty. General